

**O-642-19**

**TRADE MARKS ACT 1994  
IN THE MATTER OF  
TRADE MARK APPLICATION NO 3291061  
BY IRFAN AHMED  
TO REGISTER**

**Ruff Elegance**

**AS A TRADE MARK IN CLASS 25  
AND  
OPPOSITION THERETO (UNDER NO. 412711)  
BY  
ORIGINAL BUFF, S.A.**

## BACKGROUND

1) On 19 February 2018, Irfan Ahmed ('the applicant') applied to register the words **Ruff Elegance**, as a trade mark, in respect of goods in class 25. The specification is lengthy and can be found in Annex A to this decision. It suffices to record here that it covers a wide variety of clothing, footwear and headgear.


2) The application was published in the Trade Marks Journal on 09 March 2018 and notice of opposition was later filed by Original Buff, S.A. ('the opponent'). The opponent claims that the trade mark application offends under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ('the Act').

3) In support of its grounds under section 5(2)(b) of the Act, the opponent relies upon two earlier trade mark registrations. Details of those marks, including the goods<sup>1</sup> relied upon are shown in the table below.

Trade Mark details	Goods relied upon
<b>TM No: EU009201856 ('856)</b>  <b>BUFF</b>  <b>Filing date: 25 June 2010</b> <b>Date of entry in register: 03 January 2011</b>	<b>Class 25:</b> Ready-made clothing, including underwear and outerwear; headscarves (not included in other classes), caps, footwear (except orthopaedic footwear) and headgear.

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<sup>1</sup> Both registrations also cover goods and/or services in other classes but those are not relied upon in the subject opposition proceedings.

<p><b>TM No: EU017137019 ('019')</b></p>  <p><b>Filing date: 22 August 2017</b>  <b>Date of entry in register: 21 April 2018</b></p>	<p><b>Class 25:</b> Clothing, footwear, headgear; Visors.</p>
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4) Both of the trade marks shown in the table above are also relied upon under section 5(3) of the Act in respect of the same goods. The opponent claims that it is a market leader in its field and that the applicant is seeking to take unfair advantage of the reputation of the earlier marks. It also claims that use of the contested mark will cause detriment to the distinctive character and repute of the earlier marks.

5) Both trade marks relied upon by the opponent under sections 5(2) and 5(3) are earlier marks, in accordance with section 6 of the Act. As only mark '856 completed its registration procedure more than five years prior to the publication date of the contested mark, it is only that mark which is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods relied upon.

6) Under section 5(4)(a) of the Act, the opponent relies upon the use of two signs, which are identical to the marks relied upon under ss.5(2)(b) and 5(3) and in respect of the same goods, throughout the UK since 1996. It is claimed that use of the applicant's mark, in respect of the goods applied for, will lead to misrepresentation and damage to the opponent's goodwill associated with its earlier signs.

7) The applicant filed a counterstatement in which it puts the opponent to proof of use of earlier mark '856 and denies all the grounds of opposition.

8) Only the opponent filed evidence. Neither party requested to be heard; only the applicant filed written submissions in lieu. I now make this decision after carefully considering the papers before me.

## **OPPONENT'S EVIDENCE**

9) The opponent's evidence comes from Jacqueline Tolson, a Trade Mark Attorney at ip21 Limited (the opponent's legal representative). Ms Tolson provides the following information:

- A print from a website which connects customers to expert freelancers. The print shows a request made by the applicant for the design of the trade mark RUFF ELEGANCE "in a font similar to Tom Ford".<sup>2</sup> This is said to show that the applicant has openly sought to copy the Intellectual Property of another party (an iconic designer) when seeking to promote his own trade mark.
- A print from Collins Dictionary website showing the definition of the word 'elegance' as being 'good taste in design, style, arrangements...' and 'something elegant'.<sup>3</sup> This is said to show that the word 'elegance' has a low level of distinctiveness in relation to clothing, footwear and headgear because it can be used to describe a feature of those goods.
- An article from the Foundation Years website<sup>4</sup>. Ms Tolson highlights that the letters 'B' and 'R' are taught to children as being very similar letters. This is said to demonstrate that the letters 'B' and 'R' are visually highly similar.
- A copy of evidence submitted in ex-parte proceedings before this office in respect of the examination of the UK designation of International Registration number 1370544 for the mark BUFF<sup>5</sup>. Ms Tolson explains that the evidence was originally submitted to overcome an inherent distinctiveness objection under section 3 of the Act (raised at the examination stage) to show that the mark had acquired distinctiveness throughout the UK. She also states that the same evidence shows that the earlier marks relied upon in the subject

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<sup>2</sup> Exhibit JT1

<sup>3</sup> Exhibit JT2

<sup>4</sup> Exhibit JT3

<sup>5</sup> Exhibit JT4

opposition have the requisite reputation and goodwill. The said evidence is in the name of Mr Harold Kouwijzer, Director of Finance and Administration at the opponent company, and is dated 10 July 2018. The pertinent parts of that evidence are summarised below.

10) Mr Kouwijzer explains that BUFF clothing was first created in around 1991 and was first used in relation to a novel neck warmer (a tubular scarf) for use by motorcyclists. The brand quickly evolved to include a range of headgear and general clothing and the opponent company now sells BUFF branded goods in more than ninety countries worldwide. The opponent's most popular product is the multifunctional tubular, the original BUFF scarf. The opponent is renowned for selling BUFF clothing, particularly head and neckwear products.

11) Mr Kouwijzer states that worldwide turnover for goods sold under the BUFF trade mark, for the year 2017-2018, was in excess of 35 million Euros. This figure is not broken down in any way; it is therefore not possible to ascertain the proportion of it which relates to countries within the European Union, as opposed to elsewhere.

12) The opponent began selling BUFF clothing in the UK in 1996. Annual turnover figures from every year since then are provided. It suffices to record here that the most recent figures, from 2013 onwards, are:

<b>Financial Year</b>	<b>Turnover in Euros</b>
2013 – 2014	not less than 2,400,000
2014 – 2015	Not less than 2,200,000
2015 – 2016	Not less than 2,000,000
2016 – 2017	Not less than 2,275,000
2017 – 2018	Not less than 1,950,000

13) Mr Kouwijzer states that the above figures are for the wholesale price of the products sold to distributors and the true sales figures for BUFF branded items are substantially higher. He explains that the mark BUFF (in both word and stylised form)

is used extensively in relation to packaging, advertisements and promotional material.

14) A large number of photographs are provided showing various items of clothing bearing the mark BUFF (word only) and BUFF (stylised, as in earlier mark '019). Although the photographs are not dated, a number of the clothing tags bear copyright dates of 2014, 2015 and 2017 (at least). The marks appear both on the clothing itself and labels attached to the same. The items include neck warmers, headbands, balaclavas, hoodies, sweat jackets, t-shirts, waterproof jackets, vests, socks, gloves, hats, shorts and scarves.<sup>6</sup> Further examples of such goods bearing the marks are shown on prints from the opponent's website<sup>7</sup>. Also provided are photographs of product packaging bearing the earlier marks, all of which appear to be for types of headwear, and many of which have copyright dates which fall within the relevant five-year period.<sup>8</sup>

15) Mr Kouwijzer provides a number of invoices spanning the period 2012 – 2017 issued by the opponent company to its UK distribution company, Buffera Ltd. The opponent now owns that company. All goods in the invoices are described as 'BUFF' and include hoodies, 'tubulars' (which I understand, from other parts of the evidence, to be a type of scarf), neckwarmers, bandanas, balaclavas, hoods, hats, headbands.<sup>9</sup>

16) Mr Kouwijzer states that 'BUFF' goods are available for sale through the opponent's own website, [www.buff.com](http://www.buff.com), from Buffera Ltd and other retailers including 'Amazon', 'Go Outdoors' and 'Cotswold Outdoor'.

17) The 'BUFF' mark is promoted in a variety of ways in the UK. Such promotion includes magazine features, blogs, sponsorship and support of local community projects. Yearly expenditure figures for such promotion are given, as follows:

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<sup>6</sup> Exhibit HK1

<sup>7</sup> Exhibit HK2

<sup>8</sup> Exhibit HK3

<sup>9</sup> Exhibit HK6

<b>Year</b>	<b>Marketing expenditure in Euros</b>
2012	not less than 120,000
2013	not less than 155,000
2014	not less than 265,000
2015	not less than 250,000
2016	not less than 225,000
2017 (to Aug only)	not less than 105,000

18) The opponent utilises the services of a PR company to conduct a monthly review of the use of the BUFF trade mark in the UK. Extracts from PR reports showing details of the printed and online coverage for the BUFF mark, by month, in 2016 and 2017 are provided. For each publication, the date (month and year), type of BUFF product and circulation figures are given. All the publications show adverts for BUFF items of head and neckwear. The publications include 'The Great Outdoors' (monthly circulation: 7,762), 'Running' (monthly circ.: 21,000), 'Sport' (monthly circ: 304,899) and 'Hello' online (monthly circ: 1,464,705).<sup>10</sup>

19) A large number of newsletters are also provided which Mr Kouwijzer states are sent to customers to publicise the latest BUFF products and raise brand profile by, for example, running competitions. Most of these appear to come from 2017. All of the goods appear to be types of head and neckwear.<sup>11</sup>

20) Mr Kouwijzer states that the opponent sponsors a wide range of events throughout the UK and collaborates with various companies to design exclusive ranges of clothing. A selection of extracts from relevant websites detailing those events/collaborations are provided. They include 'The BUFF X Series' held in 2017 (a series of trail running events for which the opponent was a major sponsor) and various head and neckwear 'BUFF' items which have been designed by the opponent in connection with third party events.<sup>12</sup>

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<sup>10</sup> Exhibit HK8

<sup>11</sup> Exhibit HK9

<sup>12</sup> Exhibit HK10

21) The opponent also promotes its BUFF products at leading trade shows in the UK such as 'Core Bike 2017' and 'Outdoor Trade Show 2017'<sup>13</sup> and sponsors international Athletes and worldwide sports events. It also works with a number of organisations to help preserve the environment.

## **DECISION**

### **Proof of use**

22) Section 6A of the Act states:

#### **“Raising of relative grounds in opposition proceedings in case of non-use**

6A. - (1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

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<sup>13</sup> Exhibit HK11



(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

23) Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Consequently, the onus is upon the opponent to prove that genuine use of the registered trade mark was made in the relevant period.

24) In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale

and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

25) As earlier mark ‘856 is an EUTM, the comments of the Court of Justice of the European Union (‘CJEU’) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, are also relevant, where it noted that:

“36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).”

The court held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity."

26) In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

"228. Since the decision of the gc in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the

Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

27) The General Court restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM. This applies even where there are no special factors, such as the market for the goods/services being limited to that area of the Union.

28) Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the EUTM, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the Union during the relevant five-year period. In making the required assessment I am required to consider all relevant factors, including:

- i) The scale and frequency of the use shown
- ii) The nature of the use shown
- iii) The goods and services for which use has been shown
- iv) The nature of those goods/services and the market(s) for them
- iv) The geographical extent of the use shown

29) In accordance with section 6A(3)(a) of the Act, the relevant period in which genuine use must be established is the five-year period ending on the date of publication of the contested mark. In the case before me, that period is 10 March 2013 to 09 March 2018.

30) Viewing the evidence before me in the round, it paints a picture of the mark BUFF having been used continuously for the duration of the relevant period. This is borne out by numerous aspects of the evidence such as the annual sales figures and examples of exposure of the mark in numerous publications. I find that the mark has been put to genuine use in the relevant period in the UK and that the use is also sufficient to constitute genuine use within the European Union. I now need to consider what constitutes a fair specification, having regard for the goods upon which genuine use has been shown. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”



31) In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand,

protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them;  
*Mundipharma AG v OHIM (Case T-256/04) ECR II-449; EU:T:2007:46.*”

32) There is ample evidence before me showing use of the earlier mark in relation to a variety of head and neckwear. The evidence on other items of clothing and footwear is far less extensive but nevertheless sufficient to satisfy me that there has also been genuine use on hoodies, sweat jackets, t-shirts, waterproof jackets, vests, socks, gloves and shorts within the relevant period.<sup>14</sup> In the light of this, I consider that the opponent is entitled to rely upon its specification, as registered, since, in my view, it represents a fair description of the goods for which use been demonstrated.

### **Section 5(2)(b)**

33) This section of the Act states:

“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.”

34) The leading authorities which guide me are from the CJEU: *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,

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<sup>14</sup> Exhibits HK1 – HK2, in particular, refer.

*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.*

### **The principles**

(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.

### **Comparison of goods**

35) In *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM Case T-133/05) ('*Meric*'), the General Court held:

“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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

36) The opponent's earlier marks contain the terms 'Ready-made clothing'/'clothing', 'footwear' and 'headgear'. All the goods listed in the applicant's lengthy specification fall within those terms. The respective goods are therefore identical in accordance with *Meric*.

### **Average consumer and the purchasing process**

37) It is necessary to determine who the average consumer is for the respective goods and the manner, in which, they are likely to be selected. 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.”

38) The average consumer for the goods at issue is the general public. The purchasing act will be primarily visual due to the goods being commonly purchased based on their aesthetic appeal; they are likely to be selected after perusal of racks/shelves in retail establishments, or from photographs on Internet websites or in catalogues. That is not to say though that the aural aspect should be ignored since the goods may sometimes be the subject of discussions with retail staff, for example. The cost of the goods is likely to vary. However, factors such as size, material, eye-appeal, warmth and suitability for purpose are likely to be taken account of by the consumer in relation to all the goods, even those at the more inexpensive end of the spectrum. Generally speaking, I would expect an average degree of attention to be paid during the purchase.

### **Comparison of marks**

39) 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 the 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.”

It would therefore be wrong to artificially dissect the marks, although it is necessary to take account of 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 the marks.

40) The marks to be compared are:

Opponent's marks	Applicant's mark
<p>'856:</p> <p style="text-align: center;"><b>BUFF</b></p> <p>'019:</p>	<p style="text-align: center;"><b>Ruff Elegance</b></p>



41) Mark '856 consists of the word BUFF in plain block capitals, absent any further stylisation or embellishments; its overall impression lies solely in that word. Mark '019 consists of the word 'Buff' presented in a slightly stylised font. That word is upon a black circular background. The word 'Buff' overwhelmingly dominates the overall impression of the mark as a whole; the stylisation and black background play a more than negligible, but lesser role.

42) Turning to the applicant's mark, this consists of the plain words 'Ruff Elegance'. The opponent submits that the word 'Elegance' is low in distinctiveness in relation to the contested goods and therefore more emphasis will be placed upon the word 'Ruff'. I accept that the well-known meaning of the word 'elegance' means that it is, of itself, low in distinctive character in relation to the goods at issue. However, I must guard against artificially dissecting the mark. To my mind, the two words read through as a unit in which neither materially dominates the other.

43) I now turn to compare the marks, dealing first with earlier mark '856. The opponent contends that the respective marks are visually and aurally highly similar. I accept that there is a good degree of visual similarity between the word 'Ruff' in the contested mark and the word 'BUFF'. As to how those words sound, there is clearly identity between the respective 'uff' parts of the words but there is a notable difference due to the respective pronunciation of the initial letters 'R' and 'B', which will be the first to impact upon the ear. In my view, there is a medium degree of aural similarity between the words 'Ruff' and 'Buff'. However, I must compare the marks as wholes. There is a clear point of visual and aural contrast arising out of the presence of the word 'Elegance' in the applicant's mark which is absent from the opponent's

mark. That word takes up a large proportion of the mark from both a visual and aural perspective. Even allowing for the general rule of thumb that the beginnings of marks tend to have the greater impact on visual and aural perception, I find there to be a low degree of visual and aural similarity between the marks overall.

44) I now move on to consider the conceptual position. Aside from providing evidence to show the well-known meaning of the word 'elegance' (something good in taste, style or arrangement i.e. an elegant blouse, dress etc.), the opponent makes no submissions on the conceptual similarity between the marks. The applicant submits that:

“11. The word “Ruff”, in the context of “Ruff Elegance”, is commonly understood as a misspelling or a variation of the word “Rough”, which is defined as unsmooth or ungentle. For the sake of completeness, the literal meaning of the word “Ruff” as a projecting starched frill worn round the neck, characteristic of Elizabethan and Jacobean costume, or as a projecting or conspicuously coloured ring of feathers or hair round the neck of a bird or mammal, does not make too much sense in conjunction with the word “Elegance”.

12. The word 'Elegance' is defined by the Opponent as a noun describing something in good taste, style or arrangement or alternatively it is something elegant in nature i.e. an elegant blouse, dress etc. This is not disputed by the Applicant.

13. Therefore, the commonly understood meaning of Ruff Elegance is an unsmooth or ungentle style. This is the appeal of the mark; an oxymoron produced by the combination of the word 'Ruff' with the sophistication and good taste implied by the word 'Elegance'.

14. The word 'Buff' is commonly understood as one of the following:

- a. A yellowish beige colour
- b. A stout yellow leather with a velvety surface



- c. As a derivative of the verb meaning “to polish”
- d. As an adjective for a person or their body being in good physical shape with well-developed muscles
- e. As a synonym for nudity or nakedness

15. None of the above conceptual meanings of Ruff or Buff overlap or coincide. Moreover, it should easily be appreciated from the above semantics of Ruff Elegance that the mark as a whole is not open to easy dissection and analysis, with the appeal of the mark being in its entirety (as an oxymoron) and not in relation to one of the word elements over the other.”

45) I accept that the word ‘Buff’, being a well-known English dictionary word, is one with which the average consumer is likely to be familiar. While they may not be aware of all the possible meanings of the word listed by the applicant (that it refers to a yellowish beige colour, for example), it is likely, in my view, that they will be aware of at least some of those meanings e.g. as meaning nudity, to polish or as a referring to a person on good physical shape. I would expect at least one of those meanings to be grasped immediately. As to the applicant’s mark, I agree with the applicant that it may be immediately be perceived as evoking the idea of ‘rough elegance’ given the (aural) resemblance of ‘ruff’ to the everyday word ‘rough’ and the combination of that word with ‘elegance’ giving rise to a playful oxymoron, as described by the applicant. If I am wrong about that, the applicant’s mark does not, in any event, share any of the possible meanings of the opponent’s mark. There is no conceptual similarity between the marks.

46) Bearing in mind my finding that mark ‘019 is overwhelmingly dominated by the word ‘Buff’, I find that this mark is also visually and aurally similar to a low degree and shares no conceptual similarity with the contested mark.

#### **Distinctive character of the earlier mark**

47) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of

confusion (*Sabel BV v Puma AG*). 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).”

48) As I have already noted, BUFF is a known dictionary word with a variety of meanings. However, none of the meanings which are likely to be perceived by the average consumer (my comments in paragraph 45 refer) have any descriptive or allusive significance in the context of the opponent’s goods. I find both earlier marks to be possessed of a normal degree of inherent distinctive character (I do not consider the stylisation or black circular background in mark ‘019 elevates the inherent distinctiveness of that mark to any higher degree).

49) Turning to the question of whether the distinctiveness of the earlier marks has been enhanced through the use made of them, the evidence shows fairly substantial sales of those goods in the UK consistently for nearly twenty years, together with

examples of frequent exposure in widely circulated UK magazines and other publications. I find that both enjoy an above average degree of distinctiveness, consequent upon the use made of them in the UK, in relation to head and neckwear. As to the other goods covered by the opponent's specifications, whilst the evidence before me is sufficient to show that the mark has been put to genuine use in relation to other items falling within the opponent's specification, it falls short of satisfying me that the earlier mark enjoys enhanced distinctiveness in relation to them.

### **Likelihood of confusion**

50) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

51) The fact that there is identity between the goods is a strong factor weighing in the opponent's favour as is the above average degree of distinctiveness of the earlier marks consequent upon the use made of them, at least insofar as head and neckwear is concerned. However, for the rest of the goods relied upon, the earlier marks have no more than a normal level of distinctiveness. As to the similarity between the respective marks, they are visually and aurally similar only to a low degree. The degree of visual similarity is a particularly important factor given that the purchase is likely to be mainly visual<sup>15</sup>. There is also no conceptual similarity between them. Taking all these factors together, I find that an average consumer paying an average degree of attention, is unlikely to mistake either of the earlier marks for the applicant's mark (or vice versa), notwithstanding the potential for imperfect recollection; there is no likelihood of direct confusion. I also do not consider

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<sup>15</sup> See the judgment of the General Court in *New Look Ltd v OHIM*, T-117/03 to T-119/03 and T-171/03, [49].

there to be sufficient similarities between the earlier marks and the contested mark to cause the average consumer to believe that the applicant's mark is another brand or sub brand of the opponent or some linked undertaking.<sup>16</sup> There is no likelihood of indirect confusion in respect of either earlier mark.

### **Section 5(3)**

52) This section of the Act provides that:

“(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.”

53) The leading cases in assessing a claim under section 5(3) of the Act are 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 Case 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.

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<sup>16</sup> Having regard for the comments of the Appointed Person, Mr Iain Purvis QC, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, [16]

- (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 later mark would cause an average consumer to bring 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 likelihood 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*).

## **Reputation**

54) The required level of reputation was described by the CJEU in *General Motors* in the following way:

“23. ... In so far as Article 5(2) of the Directive, unlike Article 5(1), protects trade marks registered for non-similar products or services, its first condition implies a certain degree of knowledge of the earlier trade mark among the public. It is only where there is a sufficient degree of knowledge of that mark that the public, when confronted by the later trade mark, may possibly make an association between the two trade marks, even when used for non-similar products or services, and that the earlier trade mark may consequently be damaged.

24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector.

25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.”

55) I have already commented earlier in this decision on the use that has been made of the earlier marks in the UK. I find that both had a reasonably strong reputation in the UK at the date of filing of the opposed application for head and neckwear. I find no reputation in relation to the remaining goods relied upon, for which the use shown is far less substantial.

### **The link**

56) In addition to having a reputation, a link must be made between the applicant’s trade mark and the earlier marks. In *Adidas-Salomon*, the CJEU stated:

“The infringements referred to in Article 5(2) of the Directive, where they occur, are the consequence of a certain degree of similarity between the mark and the sign, by virtue of which the relevant section of the public makes a connection between the sign and the mark, that is to say, establishes a link between them even though it does not confuse them (see, to that effect, Case C-375/97 *General Motors* [1999] ECR I-5421, paragraph 23). The existence of such a link must, just like a likelihood of confusion in the context of Article 5(1)(b) of the Directive, be appreciated globally, taking into account all factors relevant to the circumstances of the case (see, in respect of the likelihood of

confusion, SABEL, paragraph 22, and Marca Mode, paragraph 40).”

57) In *Intel* the CJEU provided further guidance on the factors to consider when assessing whether a link has been established. It stated:

“41 The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case...

42 Those factors include:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks were registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark’s reputation;
- the degree of the earlier mark’s distinctive character, whether inherent or acquired through use;
- the existence of the likelihood of confusion on the part of the public”.

58) Most of the above factors have already been assessed under section 5(2)(b). As to the first factor, I have found that the opponent’s marks are visually and aurally similar to a low degree and share no conceptual similarity with the contested mark. As to the second factor, the opponent’s head and neckwear is identical to at least some of the goods in the applicant’s specification (caps, hats, scarves etc.). The degree of similarity with the applicant’s other kinds of clothing, footwear and headgear ranges from high to medium bearing in mind the respective natures, intended purpose and methods of use. In respect of the third and fourth factors, the opponent’s marks have a reasonably strong reputation and a normal degree of inherent distinctiveness which has been elevated to an above average degree



through the use made of them in relation to head and neckwear. As to the fifth factor, I found there to be no likelihood of confusion.

59) I find that, despite the reasonably strong reputation and above average degree of enhanced distinctiveness of the earlier marks in relation to head and neckwear, the similarities between the respective marks are not strong enough to result in the relevant public bringing either of the opponent's marks to mind when encountering the applicant's goods bearing the contested mark. This finding applies to all the contested goods, even those which are identical. No link will be made. **The claim under section 5(3) of the Act fails.**

#### **Section 5(4)(a)**

60) Section 5(4)(a) states:

“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.”

61) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341,

HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "*a substantial number*" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

### **The relevant date**

62) In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act and concluded as follows:

"42...it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: "date of commencement of the conduct complained of". If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is

necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.”

63) The filing date of the contested mark is 19 February 2018. As there is no evidence of any use by the applicant before the filing date that is the only date I need to consider.

### **Goodwill**

64) The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

65) I accept that the opponent had a strong goodwill in the UK at the relevant date in a clothing business selling head and neckwear and that both earlier signs are associated with that goodwill.

### **Misrepresentation**

66) In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

67) Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 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.”

68) I find that, despite the obvious shared fields of activity of the parties and the strong goodwill vested in the opponent’s business, the opponent’s earlier signs are not similar enough to the contested mark (those similarities having been assessed earlier in this decision) to cause a substantial number of the opponent’s customers or potential customers to believe that the applicant’s goods are, in any way, connected with the opponent; there is no misrepresentation in respect of either earlier mark. Without misrepresentation, there can be no damage. **The claim under section 5(4)(a) of the Act fails.**

### **Overall outcome**

69) **The opposition fails in its entirety.**

70) I add here that in reaching the conclusions above, I have not overlooked the opponent’s evidence purporting to show that the applicant has intentionally copied

the font used in a trade mark belonging to the famous designer, Tom Ford. Put simply, I do not consider this evidence to be of any relevance or assistance in the case before me.

**Costs**

71) As the applicant has been successful, it is entitled to a contribution towards its costs. Using the guidance in Tribunal Practice Notice 2/2016, I award the applicant costs on the following basis:

Preparing a statement and considering the opponent's statement	£300
Written Submissions	£300
<b>Total:</b>	<b>£600</b>

72) I order Original BUFF, S.A. to pay Irfan Ahmed the sum of **£600**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 24<sup>th</sup> day of October 2019**

**Beverley Hedley  
For the Registrar,  
the Comptroller-General**

## **Annex A**

### **Goods applied for by the applicant:**

**Class 25:** Adhesive bras;After ski boots;Aikido suits;Aikido uniforms;Albs;Aloha shirts;American football bibs;American football pants;American football shirts;American football shorts;American football socks;Anglers' shoes;Ankle boots;Ankle socks;Anklets [socks];Anoraks;Anoraks [parkas];Anti-perspirant socks;Anti-sweat underclothing;Anti-sweat underwear;Après-ski boots;Après-ski shoes;Aprons;Aprons [clothing];Aqua shoes;Arm warmers [clothing];Army boots;Articles of clothing;Articles of clothing for theatrical use;Articles of clothing made of hides;Articles of clothing made of leather;Articles of outer clothing;Articles of sports clothing;Articles of underclothing;Ascots;Ascots (ties);Athletic clothing;Athletic footwear;Athletic shoes;Athletic tights;Athletic uniforms;Athletics footwear;Athletics hose;Athletics shoes;Athletics vests;Babies' clothing;Babies' outerclothing;Babies' pants [clothing];Babies' pants [underwear];Babies' undergarments;Babushkas;Baby bibs [not of paper];Baby bodysuits;Baby boots;Baby bottoms;Baby clothes;Baby doll pyjamas;Baby layettes for clothing;Baby pants;Baby sandals;Baby tops; Balaclavas; Ball gowns;Ballet shoes;Ballet slippers;Ballet suits;Ballroom dancing shoes; Bandanas;Bandanas [neckerchiefs];Bandannas;Bandeaux [clothing];Barber smocks;Baseball caps;Baseball caps and hats;Baseball hats;Baseball shoes; Baseball uniforms;Baselayer bottoms;Baselayer tops;Basic upper garment of Korean traditional clothes [Jeogori];Basketball shoes;Basketball sneakers;Bath robes;Bath sandals;Bath shoes;Bath slippers;Bathing caps;Bathing costumes;Bathing costumes for women;Bathing drawers;Bathing suit cover-ups;Bathing suits;Bathing suits for men;Bathing trunks;Bathrobes;Bathwraps;Beach clothes;Beach clothing;Beach cover-ups;Beach footwear;Beach hats;Beach robes;Beach shoes;Beach wraps;Beachwear;Beanie hats;Beanies;Bed jackets;Bed socks;Belts [clothing];Belts for clothing;Belts made from imitation leather;Belts made of leather;Belts made out of cloth;Belts (Money -) [clothing];Belts of textile;Berets;Bermuda shorts;Bib overalls for hunting;Bib shorts;Bib tights;Bibs, not of paper;Bibs, sleeved, not of paper; Bikinis;Blazers;Bloomers;Blouses;Blouson jackets;Blousons;Blue jeans;Board shorts;Boardshorts;Boas;Boas [clothing];Boas [necklets];Boaters;Bobble

hats;Bodices;Bodices [lingerie];Bodies [clothing];Bodies [underclothing];Body linen [garments];Body stockings;Body suits;Body warmers;Bodysuits;Boiler suits;Boleros;Bolo ties;Bolo ties with precious metal tips;Bomber jackets; Bonnets;Bonnets [headwear];Boot cuffs;Boot uppers;Bootees (woollen baby shoes);Booties;Boots;Boots for motorcycling;Boots for sport;Boots for sports;Boots (Ski -);Bottoms [clothing];Bow ties;Bowling shoes;Bowties;Boxer briefs;Boxer shorts;Boxing shoes;Boxing shorts;Boy shorts [underwear];Boys' clothing;Bra straps;Bra straps [parts of clothing];Braces as suspenders;Braces for clothing;Braces for clothing [suspenders];Braces [suspenders]; Bralettes;Bras; Brassieres; Breeches ;Breeches for wear;Bridal garters;Bridal gowns;Bridesmaid dresses; Bridesmaids wear;Briefs;Briefs [underwear];Bucket caps;Burnouses; Bushjackets; Bustiers;Bustle holder bands for obi (obiage);Bustles for obi-knots (obiage-shin);Button down shirts;Button-front aloha shirts; Caftans;Cagoules; Camiknickers; Camisoles; Camouflage gloves;Camouflage jackets;Camouflage pants;Camouflage shirts;Camouflage vests;Canvas shoes;Cap peaks;Cap visors;Capelets; Capes;Capes (clothing); Caps;Caps being headwear;Caps [headwear];Caps (Shower -);Caps with visors;Car coats;Cardigans;Cargo pants;Cashmere clothing;Cashmere scarves;Casual clothing;Casual footwear; Casual jackets;Casual shirts;Casual trousers;Casual wear;Casualwear; Chaps;Chaps (clothing);Chasubles;Chefs' hats;Chefs' whites;Chemise tops;Chemises; Chemisettes; Cheongsams (Chinese gowns);Children's clothing; Childrens' clothing;Children's footwear;Children's headwear;Children's outerclothing;Children's wear;Chino pants;Choir robes;Christening gowns; Christening robes; Cleats for attachment to sports shoes;Climbing boots;Climbing boots [mountaineering boots];Climbing footwear;Cloaks;Clogs;Cloth bibs;Cloth bibs for adult diners;Clothes; Clothes for sport;Clothes for sports;Clothing;Clothing for babies;Clothing for children;Clothing for cycling;Clothing for cyclists;Clothing for fishermen;Clothing for gymnastics;Clothing for horse-riding [other than riding hats];Clothing for infants; Clothing for leisure wear;Clothing for martial arts;Clothing for men, women and children;Clothing for skiing;Clothing for sports;Clothing for wear in judo practices; Clothing for wear in wrestling games;Clothing layettes;Clothing made of fur;Clothing made of imitation leather;Clothing made of leather;Clothing of imitations of leather; Clothing of leather;Coats;Coats for men;Coats for women;Coats made of cotton; Coats of denim;Coats (Top -);Cocktail dresses;Collar guards for protecting clothing



collars; Collar liners for protecting clothing collars; Collar protectors; Collared shirts; Collars; Collars [clothing]; Collars for dresses; Combative sports uniforms; Combinations [clothing]; Corduroy pants; Corduroy shirts; Corduroy trousers; Corselets; Corsets; Corsets [clothing, foundation garments]; Corsets [foundation clothing]; Corsets [underclothing]; Costumes; Costumes for use in children's dress up play; Costumes for use in role-playing games; Costumes (Masquerade -); Cotton coats; Coveralls; Coverups; Cover-ups; Cowls [clothing]; Cravates; Cravats; Crew neck sweaters; Crinolines; Crop tops; Cuffs; Culotte skirts; Culottes; Cumberbunds; Cycling caps; Cycling Gloves; Cycling pants; Cycling shoes; Cycling shorts; Cycling tops; Cyclists' clothing; Dance clothing; Dance costumes; Dance shoes; Dance slippers; Deck shoes; Deck-shoes; Denim coats; Denim jackets; Denim jeans; Denim pants; Denims [clothing]; Desert boots; Detachable collars; Detachable neckpieces for kimonos (haneri); Dinner jackets; Dinner suits; Disposable slippers; Disposable underwear; Donkey jackets; Down jackets; Down vests; Drawers as clothing; Drawers [clothing]; Dress pants; Dress shields; Dress shirts; Dress shoes; Dress suits; Dresses; Dresses for evening wear; Dresses for infants and toddlers; Dresses made from skins; Dressing gowns; Driving gloves; Driving shoes; Dry suits; Duffel coats; Duffle coats; Dungarees; Dust coats; Ear muffs; Ear muffs [clothing]; Ear warmers; Earbands; Earmuffs; Embossed heels of rubber or of plastic materials; Embossed soles of rubber or of plastic materials; Espadrilles; Esparto shoes or sandals; Esparto shoes or sandles; Evening coats; Evening dresses; Evening gowns; Evening suits; Evening wear; Exercise wear; Eye masks; Fabric belts; Fabric belts [clothing]; Fake fur hats; Fancy dress costumes; Fascinator hats; Fashion hats; Fedoras; Fezzes; Figure skating clothing; Fingerless gloves; Fingerless gloves as clothing; Fishermen's jackets; Fishing boots; Fishing clothing; Fishing footwear; Fishing headwear; Fishing jackets; Fishing shirts; Fishing smocks; Fishing vests; Fishing waders; Fitted swimming costumes with bra cups; Fittings of metal for boots and shoes; Fittings of metal for footwear; Flat caps; Flat shoes; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Fleeces; Flip-flops; Flip-flops for use as footwear; Flying suits; Foam pedicure slippers; Folk costumes; Foot volleyball shoes; Football boots; Football boots (Studs for -); Football jerseys; Football shirts; Football shoes; Footless socks; Footless tights; Footmuffs, not electrically heated; Footwear; Footwear [excluding orthopedic footwear]; Footwear (Fittings of metal for -); Footwear for men; Footwear for men and women; Footwear for snowboarding; Footwear for sport; Footwear for sports; Footwear for track and field

athletics;Footwear for use in sport;Footwear for women;Footwear made of vinyl;Footwear made of wood;Footwear (Non-slipping devices for -);Footwear not for sports;Footwear soles;Footwear (Tips for -);Footwear uppers;Footwear (Welts for -);Formal evening wear;Formal wear;Formalwear;Foulards [clothing articles];Foundation garments; Frames (Hat -) [skeletons];Frock coats;Full-length kimonos (nagagi);Functional underwear;Fur cloaks;Fur coats;Fur coats and jackets;Fur hats;Fur jackets;Fur muffs;Fur stoles;Furs [clothing];Gabardines;Gabardines [clothing];Gaiter straps;Gaiters;Galoshes;Garments for protecting clothing;Garrison caps;Garter belts;Garters;Gauchos;Gilets;Girdles;Girdles [corsets];Girls' clothing;Gloves;Gloves as clothing;Gloves [clothing];Gloves for apparel;Gloves for cyclists;Gloves including those made of skin, hide or fur;Gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices;Golf caps;Golf clothing, other than gloves;Golf footwear;Golf pants, shirts and skirts;Golf shirts;Golf shoes;Golf shorts;Golf skirts;Golf trousers;Goloshes;Gowns;Gowns for doctors;Greatcoats;G-strings;Guernseys;Gussets for bathing suits [parts of clothing];Gussets for footlets [parts of clothing];Gussets for leotards [parts of clothing];Gussets for stockings [parts of clothing];Gussets for tights [parts of clothing];Gussets for underwear [parts of clothing];Gussets [parts of clothing];Gym boots;Gym shorts;Gym suits;Gymnastic shoes;Gymshoes;Gymwear;Hairdressing capes;Half-boots;Halloween costumes;Halter tops;Handball shoes;Handwarmers [clothing];Haneri [detachable neckpieces for kimonos];Hat frames [skeletons];Hats;Hats (Paper -) [clothing];Head bands;Head scarves;Head sweatbands;Head wear;Headbands;Headbands against sweating;Headbands [clothing];Headbands for clothing;Headdresses [veils];Headgear;Headgear for wear; Headscarfs; Headscarves; Headshawls;Headsquares;Headwear;Heavy coats;Heavy jackets;Heel inserts;Heel pieces for shoes;Heel pieces for stockings;Heelpieces for footwear; Heelpieces for stockings;Heels;High rain clogs (ashida);High-heeled shoes;Hiking boots;Hiking shoes;Hockey shoes;Hooded pullovers;Hooded sweat shirts;Hooded sweatshirts;Hooded tops;Hoodies;Hoods;Hoods [clothing];Horse-riding boots;Horse-riding pants;Hosiery;House coats;Housecoats;Hunting boot bags;Hunting boots;Hunting jackets;Hunting pants;Hunting shirts;Hunting vests;Imitation leather dresses;Infant clothing;Infant wear;Infants' boots;Infants' clothing;Infants' footwear; Infants' shoes;Infants' trousers;Infantwear;Inner socks for footwear;Inner soles; Innersocks;Insoles;Insoles for footwear;Insoles for shoes and boots;Insoles [for

shoes and boots];Intermediate soles;Jacket liners;Jackets;Jackets being sports clothing;Jackets [clothing];Jackets (Stuff -) [clothing];Japanese footwear of rice straw (waraji);Japanese kimonos;Japanese sleeping robes (nemaki);Japanese sleeping robes [nemaki];Japanese split-toed work footwear (jikatabi);Japanese style clogs and sandals;Japanese style sandals of felt;Japanese style sandals of leather;Japanese style sandals (zori);Japanese style socks (tabi);Japanese style socks (tabi covers); Japanese style wooden clogs (geta);Japanese toe-strap sandals (asaura-zori); Japanese traditional clothing;Jeans;Jerkins;Jerseys;Jerseys [clothing];Jockstraps [underwear];Jodhpurs;Jogging bottoms;Jogging bottoms [clothing];Jogging outfits;Jogging pants;Jogging sets [clothing];Jogging shoes;Jogging suits;Jogging tops;Judo suits;Judo uniforms;Jump Suits;Jumper dresses;Jumper suits; Jumpers;Jumpers [pullovers];Jumpers [sweaters];Jumpsuits;Kaftans;Karate suits;Karate uniforms;Kendo outfits;Kerchiefs;Kerchiefs [clothing]; Khakis;Kilts; Kimonos;Knee warmers [clothing];Knee-high stockings;Knickerbockers;Knickers;Knit jackets;Knit shirts;Knit tops;Knitted baby shoes;Knitted caps;Knitted clothing;Knitted gloves;Knitted tops;Knitted underwear;Knitwear;Knitwear [clothing];Knot caps; Korean outer jackets worn over basic garment [Magoja];Korean topcoats [Durumagi];Korean traditional women's waistcoats [Baeja];Laboratory coats;Lace boots;Ladies' boots;Ladies' clothing;Ladies' dresses;Ladies' footwear;Ladies' outerclothing;Ladies' sandals;Ladies' suits;Ladies' underwear;Ladies wear;Layettes;Layettes [clothing];Leather belts [clothing];Leather clothing;Leather (Clothing of -);Leather (Clothing of imitations of -);Leather coats;Leather dresses;Leather garments;Leather headwear;Leather jackets;Leather pants;Leather shoes;Leather slippers;Leather suits;Leather waistcoats;Leg warmers;Leggings [leg warmers];Leggings [trousers];Legwarmers;Leg-warmers;Leisure clothing;Leisure footwear;Leisure shoes;Leisure suits;Leisure wear;Leisurewear;Leotards;Light-reflecting coats;Light-reflecting jackets;Linen (Body -) [garments];Linen clothing; Lingerie; Linings (Ready-made -) [parts of clothing];Liveries;Long jackets;Long johns;Long sleeve pullovers;Long sleeved vests;Long-sleeved shirts;Lounge pants;Loungewear;Lounging robes;Low wooden clogs (hiyori-geta);Low wooden clogs (koma-geta);Low wooden clogs [koma-geta]; Lumberjackets; Mackintoshes; Maillots;Maillots [hosiery];Maniples;Mankinis;Mantillas;Mantles;Martial arts uniforms; Masks (Sleep -);Masquerade costumes;Maternity bands;Maternity clothing;Maternity dresses;Maternity leggings;Maternity lingerie;Maternity pants;Maternity shirts;

Maternity shorts;Maternity sleepwear;Maternity smocks;Maternity tops;Maternity underwear;Maternity wear;Men's and women's jackets, coats, trousers, vests;Men's clothing;Men's dress socks;Men's sandals;Men's socks;Men's suits;Men's underwear;Menswear;Metal fittings for Japanese style wooden clogs; Millinery; Miniskirts;Miters [hats];Mitres [hats];Mittens;Mitts [clothing];Moccasins;Mock turtleneck shirts;Mock turtleneck sweaters;Mock turtlenecks;Moisture-wicking sports bras;Moisture-wicking sports pants;Moisture-wicking sports shirts;Money belts [clothing];Monokinis;Morning coats;Motorcycle gloves;Motorcycle jackets;Motorcycle rain suits;Motorcycle riding suits;Motorcyclist boots;Motorcyclists' clothing; Motorcyclists' clothing of leather; Motorists' clothing;Mountaineering boots; Mountaineering shoes;Mufflers;Mufflers as neck scarves;Mufflers [clothing];Mufflers [neck scarves];Muffs;Muffs [clothing];Mules;Muumuus;Nappy pants [clothing];Neck scarfs [mufflers];Neck scarves;Neck scarves [mufflers];Neck tubes; Neckbands; Neckerchiefs;Neckerchieves;Neckties;Neckwear;Negligees;Night gowns;Night shirts;Nightcaps;Nightdresses;Nightgowns;Nighties;Nightshirts;Nightwear;Non-slip socks;Non-slipping devices for footwear;Nurse dresses;Nurse overalls;Nurse pants;Nurses' uniforms;Oilskins [clothing];One-piece clothing for infants and toddlers;One-piece playsuits;One-piece suits;Open-necked shirts;Outer clothing;Outer soles;Outerclotthing;Outerclotthing for boys;Outerclotthing for girls;Outerclotthing for men;Outerwear;Overalls;Overalls for infants and toddlers; Overcoats;Overshirts;Overshoes;Overtrousers;Over-trousers;Padded pants for athletic use;Padded shirts for athletic use;Padded shorts for athletic use;Pajama bottoms;Pajamas;Pajamas (Am.);Pantaloons;Pantie-girdles;Panties;Pants;Pants (Am.);Pantsuits;Panty hose;Pantyhose;Paper aprons;Paper clothing;Paper hats [clothing];Paper hats for use as clothing items;Paper hats for wear by chefs;Paper hats for wear by nurses;Pareos;Pareus;Parkas;Party hats [clothing];Pea coats;Peaked caps;Peaked headwear;Peaks (Cap -);Pedal pushers;Pedicure sandals;Pedicure slippers;Peignoirs;Pelerines;Pelisses;Petticoats;Petti-pants; Pinafore dresses;Pinafores;Pique shirts;Pirate pants;Plastic aprons;Plastic baby bibs;Plastic slippers;Platform shoes;Play suits;Playsuits [clothing];Pleated skirts for formal kimonos (hakama);Plimsolls;Plus fours;Plush clothing;Pocket kerchiefs; Pocket squares;Pocket squares [clothing];Pockets for clothing;Polar fleece jackets;Polo boots;Polo knit tops;Polo neck jumpers;Polo shirts;Polo sweaters; Ponchos;Pop socks;Pram suits;Printed t-shirts;Protective metal members for shoes

and boots;Pullovers;Pullstraps for shoes and boots;Pumps [footwear]; Puttees; Puttees and gaiters;Pyjamas;Pyjamas [from tricot only];Quilted jackets [clothing];Quilted vests;Rain boots;Rain coats;Rain hats;Rain jackets;Rain ponchos;Rain shoes;Rain slickers;Rain suits;Rain trousers;Rain wear; Raincoats;Rainproof clothing;Rainproof jackets;Rainshoes;Rainwear;Ramie shirts;Rash guards;Ready-made clothing;Ready-made linings [parts of clothing];Ready-to-wear clothing;Referees uniforms;Removable collars;Replica football kits;Reversible jackets;Riding boots;Riding gloves;Riding Gloves;Riding jackets;Riding shoes;Riding trousers;Robes;Robes (Bath -);Roll necks [clothing]; Roller shoes;Romper suits;Rompers;Ruanas;Rubber fishing boots;Rubber shoes;Rubber soles for jikatabi;Rubbers [footwear];Rugby boots;Rugby jerseys; Rugby shirts;Rugby shoes;Rugby shorts;Rugby tops;Running shoes;Running Suits;Running vests;Sabots;Safari jackets;Sailing wet weather clothing;Sailor suits;Salopettes;Sandal-clogs;Sandals;Sandals and beach shoes; Sarees; Saris; Sarongs;Sash bands for kimono (obi);Sashes for wear;Scarfs;Scarves;School uniforms;Scrimmage vests;Sedge hats (suge-gasa);Serapes;Shampoo capes;Shawls;Shawls and headscarves;Shawls and stoles;Shawls [from tricot only];Sheepskin coats;Sheepskin jackets;Shell jackets;Shell suits;Shields (Dress - );Shift dresses;Shirt fronts;Shirt yokes;Shirt-jacs;Shirts;Shirts and slips;Shirts for suits;Shoe covers, other than for medical purposes;Shoe inserts for non-orthopedic purposes;Shoe soles;Shoe soles for repair;Shoe straps;Shoe uppers;Shoes;Shoes for casual wear;Shoes for foot volleyball;Shoes for infants;Shoes for leisurewear;Shoes soles for repair;Shoes with hook and pile fastening tapes;Short overcoat for kimono (haori);Short petticoats; Short sets [clothing];Short trousers;Shortalls;Shorts;Shorts [clothing];Short-sleeve shirts;Short-sleeved shirts;Short-sleeved T-shirts;Shoulder scarves;Shoulder straps for clothing;Shoulder wraps;Shoulder wraps [clothing]; Shoulder wraps for clothing; Shower caps;Shrugs;Silk clothing;Silk scarves;Silk ties;Singlets;Skating outfits;Ski and snowboard shoes and parts thereof;Ski balaclavas;Ski boot bags;Ski boots;Ski gloves;Ski hats;Ski jackets;Ski pants;Ski suits;Ski suits for competition;Ski trousers;Ski wear;Skiing shoes;Skirt suits; Skirts;Skorts;Skull caps;Slacks;Sleep masks;Sleep pants;Sleep shirts;Sleeping garments;Sleepsuits;Sleepwear;Sleeved jackets;Sleeveless jackets;Sleeveless jerseys;Sleeveless pullovers;Sliding shorts;Slip-on shoes;Slipovers;Slipovers [clothing];Slipper socks;Slipper

soles;Slippers;Slippers made of leather;Slips;Slips [clothing];Slips [underclothing];Slips [undergarments];Small hats;Smocks;Smoking jackets;Snap crotch shirts for infants and toddlers;Sneakers;Sneakers [footwear];Snoods [scarves];Snow boarding suits;Snow boots;Snow pants;Snow suits;Snowboard boots;Snowboard gloves;Snowboard jackets;Snowboard mittens;Snowboard shoes;Snowboard trousers;Snowsuits;Soccer bibs;Soccer boots;Soccer shirts;Soccer shoes;Sock suspenders;Socks;Socks and stockings;Socks for infants and toddlers;Socks for men;Soles for footwear;Soles for japanese style sandals;Soles [Inner];Spats;Sport coats;Sport shirts;Sport shoes;Sport stockings;Sports [Boots for -];Sports bras;Sports caps;Sports caps and hats;Sports clothing;Sports clothing [other than golf gloves];Sports footwear;Sports headgear [other than helmets];Sports jackets;Sports jerseys;Sports jerseys and breeches for sports;Sports over uniforms;Sports overuniforms;Sports pants;Sports shirts;Sports shirts with short sleeves;Sports shoes;Sports singlets;Sports socks;Sports vests;Sports wear;Sportswear;Stiffeners for boots;Stiffeners for shoes;Stocking suspenders;Stockings;Stockings (Heel pieces for -);Stockings [sweat-absorbent];Stockings (Sweat-absorbent -);Stoles;Stoles (Fur -);Strapless bras;Strapless brassieres;Straps (Gaiter -);Stretch pants;String fasteners for haori (haori-himo);Studs for football boots;Stuff jackets;Stuff jackets [clothing];Suede jackets;Suit coats;Suits;Suits (Bathing -);Suits made of leather;Suits of leather;Sun hats;Sun visors;Sun visors [headwear];Sundresses;Sunsuits;Surf wear; Surfwear; Suspender belts;Suspender belts for men;Suspender belts for women; Suspenders; Suspenders [braces];Swaddling clothes;Sweat bands;Sweat bands for the head;Sweat bands for the wrist;Sweat bottoms;Sweat jackets;Sweat jackets;Sweat pants;Sweat shirts;Sweat shorts;Sweat suits;Sweat-absorbent socks;Sweat-absorbent stockings;Sweat-absorbent underclothing;Sweat-absorbent underclothing [underwear];Sweat-absorbent underwear; Sweatbands; Sweaters; Sweatjackets; Sweatpants; Sweatshirts;Sweatshorts;Sweatsuits;Swim briefs;Swim caps;Swim shorts;Swim suits;Swim trunks;Swim wear for children;Swim wear for gentlemen and ladies;Swimming caps;Swimming caps [bathing caps];Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear;Synthetic fur stoles; Tabards; Taekwondo suits;Taekwondo uniforms;Tail coats;Tam o'shanter; Tams;Tank tops;Tankinis;Tank-tops;Tap pants;Tap shoes;Tartan kilts; Teddies; Teddies [underclothing];Teddies [undergarments];Tee-shirts;Tennis dresses;Tennis

pullovers;Tennis shirts;Tennis shoes;Tennis shorts;Tennis skirts;Tennis socks;  
Tennis sweatbands;Tennis wear;Theatrical costumes;Thermal clothing;Thermal  
headgear;Thermal socks;Thermal underwear;Thermally insulated clothing;  
Thobes;Thong sandals;Thongs;Three piece suits [clothing];Ties;Ties [clothing];  
Tightening-up strings for kimonos (datejime);Tights;Tips for footwear;Toe boxes;Toe  
straps for Japanese style sandals [zori];Toe straps for Japanese style wooden  
clogs;Toe straps for zori [Japanese style sandals];Togas;Tongues for shoes and  
boots;Top coats;Top hats;Topcoats;Tops;Tops [clothing];Toques [hats];Track and  
field shoes;Track jackets;Track pants;Track suits;Tracksuit bottoms;Tracksuit  
tops;Tracksuits;Traction attachments for footwear;Trainers;Trainers [footwear];  
Training shoes;Training suits;Trekking boots;Trench coats; Trenchcoats; Trews;  
Triathlon clothing;Trousers socks;Trousers straps;Trousers;Trousers for children;  
Trousers for sweating;Trousers of leather;Trousers shorts;Trunks;Trunks (Bathing -  
);Trunks [underwear];T-shirts;Tube tops;Tunics;Turbans;Turtleneck pullovers;  
Turtleneck shirts;Turtleneck sweaters;Turtleneck tops; Turtlenecks; Tutus;Tuxedo  
belts;Tuxedos;Twin sets;Umpires uniforms;Under garments;Under shirts;Underarm  
gussets [parts of clothing]; Underclothes; Underclothing; Underclothing (Anti-sweat -  
);Underclothing for women; Undergarments; Underpants; Underpants for  
babies;Undershirts;Undershirts for kimonos (juban);Undershirts for kimonos  
(koshimaki);Undershirts for kimonos [koshimaki]; Underskirts;Underwear; Underwear  
(Anti-sweat -);Underwear for women;Uniforms;Uniforms for commercial  
use;Uniforms for nurses;Union suits;Unitards;Uppers (Footwear -);Uppers for  
Japanese style sandals;Uppers of woven rattan for Japanese style sandals;  
Ushankas [fur hats];Valenki [felted boots];Veils;Veils [clothing];Vest tops;Vests;Vests  
(Fishing -);Vests for use in barber shops and salons;Visors;Visors [clothing];Visors  
[hatmaking];Visors [headwear];V-neck sweaters;Volleyball jerseys;Volleyball  
shoes;Waders;Waist belts;Waist cinchers;Waist strings for kimonos (koshihimo);  
Waistbands;Waistcoats;Waistcoats [vests];Walking boots;Walking breeches;Walking  
shoes;Walking shorts;Warm up suits;Warm-up jackets;Warm-up pants;Warm-up  
suits;Warm-up tops;Water socks;Water polo caps;Waterproof boots;Waterproof boots  
for fishing;Waterproof capes;Waterproof clothing;Waterproof jackets;Waterproof  
outerclothing;Waterproof pants;Waterproof shoes;Waterproof suits for motorcyclists;  
Waterproof trousers;Water-resistant clothing;Waterskiing suits;Weather resistant  
outer clothing;Weatherproof clothing;Weatherproof jackets;Weatherproof

pants;Wedding dresses;Wedding gowns;Wellington boots;Wellingtons;Welts for footwear;Wet suits;Wet suits for surfing;Wet suits for water-skiing;Wet suits for water-skiing and sub-aqua;Wet suits for windsurfing; Wetsuit gloves;Wetsuits;Wetsuits for surface watersports;Wetsuits for surfing;Wetsuits for water-skiing;White coats for hospital use;Wimples;Wind coats;Wind jackets;Wind pants;Wind resistant jackets;Wind suits;Wind vests;Windcheaters;Wind-jackets;Windproof clothing;Windproof jackets;Wind-resistant jackets;Wind-resistant vests;Windshirts;Winter boots;Winter coats;Winter gloves;Women's ceremonial dresses;Women's clothing;Women's foldable slippers;Womens' outerclothing;Women's shoes;Women's suits;Womens' underclothing;Womens' undergarments;Women's underwear;Wooden bodies for Japanese style clogs;Wooden main bodies of Japanese style wooden clogs;Wooden shoes;Wooden shoes [footwear];Wooden supports of Japanese style wooden clogs;Woolen clothing;Woollen socks;Woollen tights;Woolly hats;Work boots;Work clothes;Work overalls;Work shoes;Working overalls;Woven clothing;Woven shirts;Wrap belts for kimonos (datemaki);Wraps [clothing];Wrist bands;Wrist warmers;Wristbands;Wristbands [clothing];Yashmaghs;Yashmaks;Yoga bottoms;Yoga pants;Yoga shirts;Yoga shoes;Yokes (Shirt -);Zoot suits;Zori.