

O/377/20

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3333408
IN THE NAME OF NZXT INC. FOR THE TRADE MARK**

NZXT

IN CLASSES 9 AND 35

AND

**THE OPPOSITION THERETO UNDER NUMBER 414828
BY
NEXT RETAIL LTD**

Background

1. On 22 August 2018, NZXT Inc. (“the applicant”) applied for the trade mark NZXT (application number 3333408) for the following goods and services:

Class 9: Computer power supplies; Internal cooling fans for computers; Computer cases; Computer mouse; Computer keyboards; Notebook computer cooling pads; Computer case fan controllers; Computer card readers; Laptop computers; Notebook computers; Handheld computers; Personal digital assistants; Computer apparatus adapted for use with television receivers or other external display screens or monitors; Computer display monitors; Computer monitors; Computer hardware; Computer sound cards; Computer peripherals; Computer controllers; Computer mice; Computer keyboards; Computer keypads; Computer graphics tablets; Pens with conductive point for touch screen devices; Electronic pens [visual display units]; Computer joysticks; Computer trackballs; Motion sensors; Apparatus for recording, transmission or reproduction of data, sound or images; Earphones; Headphones; Microphones; Headsets; Loudspeakers; Apparatus for cable management for the aforementioned goods, namely, computer peripheral cable retainers; Batteries and power supplies for the aforementioned goods; Parts and fittings for the aforementioned goods.

Class 35: Online shopping services connected with the sale of personal computer (PC) and device components and accessories, personal computer (PC) and device hardware and software, gaming components and accessories, gaming hardware and software, computer monitoring hardware and software, computer power supplies and computer cases; Arranging commercial transactions, for others, via online shops; Commercial information and advice for consumers in the choice of products and services; Retailing and wholesaling of computer software; Retail and wholesale services relating to computer software; Retailing and wholesaling of computer hardware; Retail and wholesale services relating to computer hardware; Retailing and wholesaling of computer accessories; Retail and wholesale services relating to computer accessories; Providing business information via a website.

2. The trade mark application was published for opposition purposes in the *Trade Marks Journal* on 21 September 2018. It was opposed under sections 5(2)(b) and

5(3) of the Trade Marks Act 1994 (“the Act”) on 21 December 2018 by Next Retail Ltd (“the opponent”), relying upon the following two earlier trade marks for its section 5(2)(b) ground:

(i) European Trade Mark (“EUTM”) 15568876



Date of filing: 22 June 2016; currently opposed at the European Intellectual Property Office

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus, parts and fittings for all the aforesaid goods; sunglasses; spectacles; spectacle frames; cases for spectacles and sunglasses; lenses; contact lenses; cords and chains for sunglasses; eyeglasses; eyewear; 3D spectacles; binoculars; goggles; calculators; electronic organisers; cameras; battery chargers; camcorders, time recording devices; cassette players; compact disc players; DVD players; MP3 players excluding MP3 docking stations; televisions; amplifiers; printers; computers; computer games; computer peripheral devices excluding standalone speakers; bags adapted for laptops; radios; telephones; answering machines; baby monitors; satellite navigational apparatus; navigation, guidance, tracking, targeting and map making devices; weighing machines; magnetic encoded cards; protective clothing; protective helmets; buoyancy aids; reflective clothing for the prevention of traffic accidents; batteries for lighting; battery chargers; buzzers; cabinets for loudspeakers; cases for photographic apparatus and instruments; cases for smartphones; cell phone straps; decorative magnets; digital photo frames; digital signs; directional compasses; divers' masks;

diving suits; dog whistles; electric door bells; downloadable music and image files; egg timers; electronic publications, downloadable; magnetic encoded identification bracelets; hands free kits for telephones; head guards for sports; life-saving apparatus and equipment; magic lanterns; measuring spoons; microscopes; money counting and sorting machines; pedometers; smartglasses; smartphones; smartwatches; solar batteries; walkie-talkies; wearable activity trackers; weights; parts and fittings for all the aforesaid goods; none of the aforesaid goods including speaker docks or standalone speakers.

(ii) EUTM 17607474

next

Date of filing: 22 June 2016; completion of registration procedure: 4 January 2018.

The opponent relies upon a reduced list of its class 35 services for section 5(2)(b), narrowed further at the hearing, which will be referred to later in this decision, and all of its class 35 services for section 5(3).

3. The opponent claims that there is a likelihood of confusion under section 5(2)(b), also alleging under section 5(3) that the identity or similarity between the applicant's mark and the EUTM 17607474 will cause the relevant public to believe they are used by the same undertaking or an economically linked undertaking. The opponent also claims that use of the applicant's mark will tarnish the reputation of the EUTM 17607474, erode its distinctiveness, and give an unfair advantage to the applicant by virtue of the reputation of the earlier mark.¹

4. The applicant filed a defence and counterstatement, denying the grounds.

¹ There are some discrepancies in the TM7, but it was confirmed at the hearing that the opponent's section 5(3) ground is based upon the class 35 services of EUTM 17607474 only.

5. Both sides filed evidence. The matter came to be heard by video conference on 8 January 2020. Ms Ashton Chantrielle of Counsel, instructed by Marks & Clerk LLP, represented the opponent. Ms Charlotte Blythe of Counsel, instructed by Murgitroyd & Company, represented the applicant.

The evidence

6. The opponent's evidence comes from Ms Sarah Waterland, the opponent's deputy General Counsel and from Mr David Kemp. Ms Waterland's evidence is about the use and reputation of the opponent's earlier marks. Mr Kemp's first witness statement adduces copies of the details of the opponent's earlier marks. His second witness statement replies to the applicant's criticisms of Ms Waterland's evidence.

7. The applicant's evidence comes from Mr Rob Brinkman, a director of the applicant. His evidence is about the use and reputation of the applicant's mark.

8. I will refer to the evidence as it becomes necessary during this decision.

Section 5(2)(b) of the Act

9. Section 5(2)(b) 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”.

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

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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

11. The parties' class 9 goods are shown in the table below along with the applicant's class 35 services. The opponent's class 35 specification is contained within the annex to this decision. I have reproduced below the services in the opponent's class 35 specification which appear to present its best case and are within those now relied upon under this ground.

Opponent's specification	Applicant's specification
<p>Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus, parts and fittings for all the aforesaid goods; sunglasses; spectacles; spectacle frames; cases for spectacles and sunglasses; lenses; contact lenses; cords and chains for sunglasses; eyeglasses; eyewear; 3D spectacles; binoculars; goggles; calculators; electronic organisers; cameras; battery chargers; camcorders, time recording devices; cassette players; compact disc players; DVD players; MP3 players excluding MP3 docking stations; televisions; amplifiers; printers; computers; computer games; computer peripheral devices excluding standalone speakers; bags adapted for laptops;</p>	<p>Class 9: Computer power supplies; Internal cooling fans for computers; Computer cases; Computer mouse; Computer keyboards; Notebook computer cooling pads; Computer case fan controllers; Computer card readers; Laptop computers; Notebook computers; Handheld computers; Personal digital assistants; Computer apparatus adapted for use with television receivers or other external display screens or monitors; Computer display monitors; Computer monitors; Computer hardware; Computer sound cards; Computer peripherals; Computer controllers; Computer mice; Computer keyboards; Computer keypads; Computer graphics tablets; Pens with conductive point for touch screen devices; Electronic pens [visual display units]; Computer joysticks; Computer trackballs; Motion sensors; Apparatus for recording, transmission or reproduction of data, sound or images; Earphones; Headphones; Microphones; Headsets; Loudspeakers; Apparatus for cable management for the aforementioned goods, namely, computer peripheral cable retainers; Batteries and power supplies for the aforementioned goods; Parts and fittings for the aforementioned goods.</p>

radios; telephones; answering machines; baby monitors; satellite navigational apparatus; navigation, guidance, tracking, targeting and map making devices; weighing machines; magnetic encoded cards; protective clothing; protective helmets; buoyancy aids; reflective clothing for the prevention of traffic accidents; batteries for lighting; battery chargers; buzzers; cabinets for loudspeakers; cases for photographic apparatus and instruments; cases for smartphones; cell phone straps; decorative magnets; digital photo frames; digital signs; directional compasses; divers' masks; diving suits; dog whistles; electric door bells; downloadable music and image files; egg timers; electronic publications, downloadable; magnetic encoded identification bracelets; hands free kits for telephones; head guards for sports; life-saving apparatus and equipment; magic lanterns; measuring spoons; microscopes; money counting and sorting machines; pedometers; smartglasses; smartphones; smartwatches; solar batteries; walkie-talkies; wearable activity trackers; weights; parts and fittings for all the aforesaid goods; none of the aforesaid goods including speaker docks or standalone speakers.

Class 35: Retail services, wholesale and franchise services, including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, presentation of goods on communication media, for retail purposes, provision of an on-line marketplace for buyers and sellers of goods and services, all connected with the sale of the following: apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, parts and fittings for all the aforesaid goods, hands free kits for telephones, smartphones, parts and fittings for all the aforesaid goods, none of the aforesaid goods including speaker docks or standalone speakers; business management; business consultancy services; providing commercial information to consumers; providing consumer product information via the internet; providing information and advice to consumers regarding the selection of products and items to be purchased; business administration services for processing sales made on the internet;

Class 35: Online shopping services connected with the sale of personal computer (PC) and device components and accessories, personal computer (PC) and device hardware and software, gaming components and accessories, gaming hardware and software, computer monitoring hardware and software, computer power supplies and computer cases; Arranging commercial transactions, for others, via online shops; Commercial information and advice for consumers in the choice of products and services; Retailing and wholesaling of computer software; Retail and wholesale services relating to computer software; Retailing and wholesaling of computer hardware; Retail and wholesale services relating to computer hardware; Retailing and wholesaling of computer accessories; Retail and wholesale services relating to computer accessories; Providing business information via a website.

12. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

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

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

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

14. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should

not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

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

"In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

17. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

"...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded."

18. In determining which services are identical and which are highly similar, the law requires that goods/services be considered identical where one party's description of its goods/services encompasses the specific goods/services covered by the other party's description (and vice versa): see *Gérard Meric v OHIM*, Case T-33/05, GC. On this principle, the following goods of the application are identical to the opponent's *data processing equipment and computers; parts and fittings for all the aforesaid goods*:

Computer power supplies; Internal cooling fans for computers; Computer cases; Computer mouse; Computer keyboards; Notebook computer cooling pads; Computer case fan controllers; Computer card readers; Laptop computers; Notebook computers; Handheld computers; Personal digital assistants; Computer apparatus adapted for use with television receivers or other external display screens or monitors; Computer display monitors; Computer monitors; Computer hardware; Computer sound cards; Computer peripherals; Computer controllers; Computer mice; Computer keyboards; Computer keypads; Computer graphics tablets; Pens with conductive point for touch screen devices; Electronic pens [visual display units]; Computer joysticks; Computer trackballs; Motion sensors; Earphones; Headphones; Microphones; Headsets; Apparatus for cable management for the aforementioned goods, namely, computer peripheral cable retainers; Batteries and power supplies for the aforementioned goods; Parts and fittings for the aforementioned goods.

19. *Motion sensors* can be parts for computers, performing a 'sleep' and 'wake up' function to the screen when motion or activity is detected near to the computer. *Earphones; Headphones; Microphones; Headsets* are also parts for computers; they are also covered by the opponent's hands free kits for telephones and parts and fittings for smartphones.

20. The applicant's *Apparatus for recording, transmission or reproduction of sound or images* is identical to the opponent's apparatus for recording, transmission or reproduction of sound or images. The applicant's *Apparatus for recording, transmission or reproduction of data* is identical to the opponent's data processing equipment and computers.

21. This leaves *Loudspeakers* in the applicant's class 9 specification. The opponent's class 9 specification has the exclusion "none of the aforesaid goods including speaker docks or standalone speakers". I consider that the opponent's term 'parts and fittings for all the aforesaid goods', which applies to the opponent's computers and its apparatus for recording, transmission and reproduction of sound, would cover other types of loudspeakers used as parts, as would the applicant's parts and fittings for its computers and apparatus for recording and transmission or reproduction of sound. The applicant's *loudspeakers* are, therefore, identical to the opponent's parts and fittings for all the aforesaid goods.

22. Since the opponent's class 9 earlier right is opposed, it is unknown at this stage whether this earlier right will remain a potential barrier to the application. The opponent's mark may not achieve registration or may proceed for a reduced specification which may affect the findings above in relation to identity between the parties' class 9 goods. Therefore, I will also compare the applicant's class 9 goods with the opponent's class 35 earlier right, in relation to the services set out in the table above.

23. In *Oakley, Inc v OHIM*, Case T-116/06, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, making them similar to a degree.

24. In *Tony Van Gulck v Wasabi Frog Ltd ("Miss Boo")*, BL O/391/14, Mr Geoffrey Hobbs, sitting as the Appointed Person, cautioned that "selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35". The objective of retail services, as set out in *Oakley*, "includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction" and "those services play, from the point of view of the relevant consumer, an important role when he comes to buy the goods offered for sale." On the basis of the European courts' judgments in *Sanco SA v OHIM*², and

² Case C-411/13P

*Assembled Investments (Proprietary) Ltd v. OHIM*³, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*⁴, Mr Hobbs concluded that:

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

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

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

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

25. I take from these authorities that, in comparing retail services against goods, there may be some similarity based upon complementarity and shared trade channels; the goods do not have to be identical to the subject goods of the retail service; and, that the level of similarity may be weak depending on the presence or absence of the other *Canon* factors.

26. The applicant's goods are self-evidently different in nature to retail services. The intended purpose of the goods is computing and communication. The intended

³ Case T-105/05, at paragraphs [30] to [35] of the judgment

⁴ Case C-398/07P

purpose of retail services is to encourage the sale of various goods, which means that the purpose of the goods/services is different. The goods are not in competition with the services and their method of use also differs.

27. As said above, the intended purpose of the opponent's retail services is to encourage the sale of various goods, including the goods for which the applicant has cover, which I have found to be identical to the exact same terms in the opponent's class 9 specification. I find that the opponent's retail services are complementary to the applicant's goods because the applicant's goods are (amongst others) specified as the subject of the retail services, either individually or as part of a larger group. In other words, the applicant's goods are identical to the subject goods of the retail service. The goods are indispensable to the retail services relating to them. In addition to the complementary relationship between the goods and the retailing thereof, there is an overlap in the trade channels through which the goods and services reach the average consumer. I find that there is a medium degree of similarity between the applicant's goods and the opponent's class 35 services which I have set out in the table (the full list is contained in the annex).

28. The next comparison is between the parties' class 35 services as listed in the table. The applicant's *Online shopping services connected with the sale of personal computer (PC) and device components and accessories, personal computer (PC) and device hardware and software, gaming components and accessories, gaming hardware and software, computer monitoring hardware and software, computer power supplies and computer cases; Retailing and wholesaling of computer software; Retail and wholesale services relating to computer software; Retailing and wholesaling of computer hardware; Retail and wholesale services relating to computer hardware; Retailing and wholesaling of computer accessories; Retail and wholesale services relating to computer accessories* are identical to the opponent's retail and wholesale services connected with the sale of data processing equipment and computers, parts and fittings for all the aforesaid goods.

29. This leaves *Arranging commercial transactions, for others, via online shops; Commercial information and advice for consumers in the choice of products and services; Providing business information via a website* in the applicant's specification.

Commercial information and advice for consumers in the choice of products and services is identical to the opponent's providing commercial information to consumers; providing consumer product information via the internet; providing information and advice to consumers regarding the selection of products and items to be purchased.

30. The applicant's *Arranging commercial transactions, for others, via online shops* is identical to the opponent's business administration services for processing sales made on the internet. The opponent's services must be provided to third parties and sales made on the internet is covered by commercial transactions via online shops (*Meric*).

31. *Providing business information via a website* could be provision of information about a particular business or it could cover general business information, such as business advice, consultancy and management. If the former, it appears to be identical on the *Meric* principle to the opponent's providing commercial information to consumers. If the latter, it appears to be either identical or highly similar to the opponent's business management and business consultancy services. Such services would include the provision of information about business.

The average consumer and the purchasing process

32. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

33. The average consumer for the parties' goods and retail services will be members of the general public and businesses. There is likely to be a reasonable level of attention to purchasing the goods because there is an expectation that they will last and that they will have the functionality required, being of a technical nature. Consumers are likely to pay more attention to the goods themselves rather than the retailing, but the latter will still be the subject of an average degree of attention to ensure that the selection of goods on offer meets the consumer's requirements. This

reasoning extends to the applicant's commercial information and advice for consumers in the choice of products and services.

34. Both arranging commercial transactions, for others, via online shops and providing business information via a website appear to be business services, which would result in a higher than normal level of attention, owing to the commercial consequences of the purchase for business owners which could be far-reaching.

35. All the parties' goods and services are likely to be purchased primarily visually. The average consumer will research websites, reviews and product/service information, as well as on physical retail shelves for the goods. I do not discount the potential for an aural aspect to the purchase, for example, word-of-mouth recommendation regarding retailers and business services.

Comparison of marks

36. 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 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.”

37. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

38. I will refer to the earlier marks in the singular from here onwards, as they are the same. The marks to be compared are:

Opponent's mark	Applicant's mark
next	NZXT

39. Both parties' marks consist entirely of single word elements. These elements convey the marks' overall impressions and the distinctiveness of the marks resides in these elements. The elements are both four letters in length. The first, third and fourth letters are identical. The one letter difference accounts for a quarter of the marks. Registration in block capitals covers use in upper and lower case (a point to which I will return). The marks are visually similar to a medium degree.

40. The opponent's mark is the common word 'next' and this is how it would be pronounced. The applicant's mark does not contain a vowel (or a consonant which can operate as a vowel, such as the letter 'y'). It is not possible to pronounce it as a word; at least, not to the average monolingual, English-speaking, UK consumer. If it is articulated, it will be as the separate letters which comprise the mark.

41. The meaning of the opponent's mark needs little explanation. It will be given its ordinary dictionary meaning, referring to something which comes immediately after something else. The opponent's mark is invented. It is not a dictionary word and has no meaning. Whilst the opponent's mark will create a concrete conceptual message in the mind of the average consumer, NZXT will not create a concept. There is no conceptual similarity between the marks.

Distinctive character of the earlier mark

42. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*⁵ 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).”

43. “Next” is an everyday word. It is not usually encountered by itself and it is this brevity which gives it a measure of distinctiveness which might otherwise be lacking if it were to appear in the context of a phrase or sentence. I find the earlier mark to possess a low to medium degree of inherent distinctiveness.

44. One of the principles which must be taken into account in deciding whether there is a likelihood of confusion is that there is a greater likelihood of confusion where the

⁵ Case C-342/97

earlier mark has a highly distinctive character, either *per se* or because of the use that has been made of it (*Sabel*). At this point, I turn to the evidence about the opponent's use of its mark.

45. The applicant accepts that the earlier mark has an extensive reputation for retail of clothing, footwear, accessories and homeware. These services are no longer relied upon under the section 5(2)(b) ground. The applicant disputes that there is a reputation for the other goods and services relied upon. In particular, the applicant submits that the opponent's reputation does not extend to computers and components therefor, and to the retail thereof.

46. With that concession in mind, I will concentrate on the key points from Ms Waterland's witness statement of 16 April 2019 which concern the disputed area of reputation. I will also give an overview of the extent of the accepted reputation as it is relevant to the other ground of opposition under section 5(3).

47. Ms Waterland states that:

- The opponent has more than 512 stores in the UK and almost 200 (mainly franchised) stores around the world.
- The opponent first adopted the trade mark NEXT in the UK in 1982 and its use in relation to a chain of high street stores in the UK has been continuous ever since.
- It also retails its goods through its website www.next.co.uk and through a catalogue called NEXT DIRECTORY, with a specific homewares section called NEXT HOME.
- Turnover in 2016 and 2017 was £4.1 billion per year, with figures in the decade prior to that rising from £3.1 billion: paragraph 23 of Ms Waterland's statement. These figures are not broken down into types of goods or services.

48. NEXT branded goods are sold in its stores, via its website and in its catalogue. Exhibit SLW6 comprises a selection of pages from the catalogue from 2012 to 2017. Included within these pages are examples of the opponent selling electronic goods

and computers which carry third-party branding, such as Apple and Asus (in 2012). There are pictures of its own-branded speaker docks for Apple goods (in 2012).

49. There are no figures given for the opponent's share of the market for such goods, or for their retail. Market share figures are given for clothing and homeware, only (Exhibits SLW33-34). The evidence shows that the opponent sells a wide variety of homeware (furnishings, lamps, furniture etc). Exhibit SLW34 includes a print of the definition of homewares by the Office for National Statistics. The definition does not include electronic items. Ms Waterland states that 11% of the opponent's sales are not in relation to clothing; i.e. 89% of its sales relate to clothing. Of the remaining 11%, this includes "other goods, including household goods". The only sales figures given for electronic goods are from 2010 and 2011: 50,575 cameras, 51,683 laptops and 328,418 tablets.

50. Press coverage, third-party references to the opponent and the opponent's use of its social media for promotional purposes relate only to clothing.⁶ I note that paragraph 44 of Ms Waterland's witness statement says:

"Accordingly, it is established that the NEXT mark enjoys a reputation and an enhanced distinctiveness in the UK and throughout the EU for goods and services in classes including 18, 20, 25 and 35, due to its use on the market."

51. The opponent offers business advice and consultancy in the operation of its franchised stores. These stores are all overseas, including Europe. The potential effect of enhanced distinctiveness through use on the likelihood of confusion must be in relation to the UK average consumer. This evidence, therefore, does not establish an enhanced reputation for business services in the UK.

52. The applicant criticised the opponent's evidence in its written submissions, filed during the evidential stages of these proceedings. The applicant's criticisms include:

⁶ Exhibits SLW19, SLW20, SLW21 and SLW22-27.

- The only evidence provided of reputation is in respect of goods and services which are not in contention or relevant to these proceedings.
- There is barely any mention of use in relation to the opposed goods and services either in the UK or the EU.
- In over 400 pages of evidence, there are only four pages showing any use of the opposed goods and services and these date from 2015 at the latest.
- The invoices which are included in the evidence relate to lighting, telephones and bathroom scales in 2012 and 2013.
- The cited EUIPO decisions all refer to clothing, footwear, accessories and homeware.

53. The opponent filed evidence in reply by way of a witness statement from David Kemp, its trade mark attorney. Mr Kemp's witness statement is dated 14 October 2019. Referring to the applicant's criticisms of its evidence, Mr Kemp reiterates the sales figures given in paragraph 23 of Ms Waterland's witness statement and states that the figures are testament to the opponent's use and reputation in the UK both in relation to class 9 goods and its wide-ranging retail services. Mr Kemp goes on to give page numbers in the opponent's Exhibit SLW6 which show sales of class 9 goods: he states that pages 97, 98, 108, 118, 133, 165, 187 and 188 show tablet computers, notebook computers, speakers, radio alarm clocks, e-readers, cameras, earphones, headphones, DJ mixing consoles, stylus pens and brushes for use with computer devices, and fitness wristbands.

54. In relation to these specific pages of Exhibit SLW6, I note the following:

- Page 97: the only NEXT-branded items are a speaker for the iPod, iPad and iPhone and a NEXT Bluetooth dock. The other 11 items are branded Apple, Lunas, Tick Tock, Kobo, Archos, Asus and Fuji. This page dates from the 2012 catalogue.
- Page 98: this page shows Gear earphones, an ICADE games console, an ICADE iPad controller, a Numark jukebox, and an APP remote control car. There is also an item called "Discover Karaoke": it is not possible to say wither

this is a NEXT-branded item or whether the trade mark is Discover. Another item is called All Star Guitar. This page is from the 2012 catalogue.

- Page 108: this page includes gloves and hats for using with touchscreens and headphones. There are three electronic devices depicted: one is branded iThings (a paint brush stylus) and the other two APP (a stylus and a paint brush stylus). This page is from the 2013 catalogue.
- Page 118: this page comprises pictures of men's toiletries.
- Page 133: this page comprises speakers, headphones and earphones, all branded B&O PLAY. The page is from the 2015 catalogue.
- Page 165: this page shows categories of goods available. I note that the section entitled Headphones says "Featuring Beats and Skullcandy, browse the latest additions to the ranges of headphones available at Next online". Under Gifts and Gadgets, the text gives no details about what items are available. This page appears to emanate from 2014 (according to the Web archive information at the foot of the page).
- Page 187: this page shows a Fitbit wristband fitness device from 2016.
- Page 188: this page also shows a Fitbit, and 'personalisable lightbox' (£20), from 2016.

55. Mr Kemp also exhibits at DAK2 a selection of pages taken from the Next Directory (catalogue) from 2010 to 2013 which include radios, Hi-Fi, computers, tablets, cameras, televisions and internet television boxes. As above, these pages show third-party branded electronic goods. The NEXT-branded goods comprise a speaker dock for Apple goods, DAB portable radios, a micro audio systems, telephone handsets and retro telephones, televisions, an internet TV box, a tablet computer, an alarm clock and camcorders.

56. The opponent's evidence suffers from lack of focus. The overwhelming focus of Ms Waterland's evidence is in relation to goods and services other than those relating to electronic goods and the retail thereof (as the applicant points out, almost all of the 400 plus pages filed). There is no breakdown of sales figures, and no market share figures other than in relation to clothing. 89% of the opponent's sales figures relate to clothing. 11% relate to 'other', which includes homeware. Mr Kemp has plugged some

of the large gap in the evidence with the pages in Exhibit DAK2 which show that between 2010 to 2013 the opponent sold electronic goods branded with its own mark. However, the latest of these is dated five years prior to the relevant date in these proceedings. Further, it is not possible to know what proportion of the 50,575 cameras, 51,683 laptops and 328,418 tablets sold in 2010 and 2011 (seven and eight years prior to the relevant date) were Next-branded as opposed to third-party branded.

57. The opponent's evidence is not for the purpose of proving that it has made genuine use of its marks because that is not required in these proceedings. The purpose of it is to show that the extent of its use in the UK entitles it to claim an enhanced level of distinctive character (and a reputation for the section 5(3) ground) in the goods and services relied upon. The opponent's evidence wholly fails to prove that its mark has an enhanced level of distinctive character in relation to the goods and services relied upon. The only sales figures are from seven and eight years prior to the relevant date and there is no indication of the proportion of its sales which are attributed to its own-brand goods. Even Mr Kemp's reply evidence relates to goods dating from at least five years prior to the relevant date. The opponent cannot claim, as Mr Kemp appears to suggest in his witness statement, a reputation as a retailer. Trade mark registrations cover specific goods and services. The burden is on the opponent to prove a reputation in the specific goods and services relied upon.⁷ Filing evidence about clothing and homewares and the retail thereof does not prove a reputation in electronic goods and the retail thereof in the UK, nor of the business services, which have been supplied to overseas franchisees.

58. The opponent's mark is entitled to an enhanced level of distinctive character for retail of clothing, footwear, accessories and of homeware, as conceded by the applicant, which I assess as being a high level. However, these services are no longer relied upon for the section 5(2)(b) ground. For the goods and services relied upon under section 5(2)(b), the opponent may rely only upon the inherent distinctive character of its mark, which I have found to be low to medium.

⁷ *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV and Tulliallan Burlington Ltd v EUIPO*, Case T-123/16, paragraph 27.

Likelihood of confusion

59. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. I have found some of the parties' goods and services to be identical and some similar to a medium degree.

60. In *The Picasso Estate v OHIM*, Case C-361/04 P, the CJEU found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

61. Professor Phillip Johnson, sitting as the Appointed Person, in *Wearwell Inc v. Work Well Mats Limited*, BL O/055/19, stated, at paragraph 29:

“Nevertheless, I will add briefly that when the passage from *Picasso* is read in context it is clear that the Court of Justice is not creating an additional hurdle that conceptual dissimilarity must be “obvious and pronounced” to overcome visual and aural similarity. It is simply reiterating the accepted principle that the overall impression of the mark must be considered and each factor must be weighed. If there is sufficient conceptual difference this can, in some cases, negate any likelihood of confusion which might otherwise arise from the visual or aural similarity.”

62. Mr Iain Purvis QC, sitting as the Appointed Person in *JT International S.A. v Argon Consulting & Management Limited* (“Rochester”), BL O/049/17, having reviewed *The Picasso Estate v OHIM*, observed:

“39. The interesting point here is that the absence of a particular concept is said to ‘counteract’ confusion, by making the marks easier to distinguish. So lack of conceptual similarity is not merely a ‘neutral’ factor. That is the case even where one of the two marks has no particular meaning at all to the average consumer.”

63. Whether a conceptual difference between the marks is sufficient to counteract the visual and aural similarities is liable to depend on the strength of that difference and the degree of visual and aural similarity between the marks. In *Diramode S.A. v. Richard Turnham and Linda Turnham* (“PIMKIE”), BL O/566/19, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, considered an opposition to the mark PIMKIE based upon the earlier mark PINKIES, for identical goods (precious metals and jewellery). Mr Hobbs stated that there was a high degree of visual and aural similarity between the marks and, following the CJEU’s judgement in *C-437/16 P Wolf Oil Corp v EUIPO*, that

“28. ...there is no rule to the effect that visual and aural similarities are automatically neutralised by conceptual differences. It [the CJEU] insisted upon the need for two distinct stages in the analysis of the overall likelihood of confusion, with the first being directed to ‘*a finding of the conceptual differences between the signs at issue*’ and second being directed to ‘*assessment of the degree of conceptual differences*’ with a view to determining whether they ‘*may lead to the neutralisation of visual and phonetic similarities*’.

29. Even though one of the marks in issue refers to a clear and immediately apparent concept and the other does not have a clear meaning which can be immediately perceived by the relevant public, the degree of visual and aural similarity between them may still be sufficient to give rise to the existence of a likelihood of confusion.”

64. Mr Hobbs went on to illustrate this point by referring to a decision of the GC, T-112/09, *Icebreaker Ltd v. OHIM*, in which the competing marks were ICEBERG and ICEBREAKER. The relevant Italian public would know the meaning of ICEBERG, but

not of ICEBREAKER. However, the GC said that since ICE in ICEBREAKER had a 'certain evocative force', there was a 'semantic bridge' between the marks. The GC agreed with the Board of Appeal in concluding that the conceptual comparison was not decisive and did not affect the visual and phonetic similarities or differences between the signs.

65. In the present case, the visual similarity between the marks is medium, but there is no aural similarity at all. In terms of the strength of the conceptual difference, the earlier mark consists solely of an extremely common, everyday word. The average consumer will grasp the meaning of 'next' immediately. There is no conceptual similarity because one mark has a strong concept, whilst the other has no concept. Bearing in mind that lack of conceptual similarity is not simply a neutral factor but is capable of counteracting visual and aural similarities, this strong conceptual difference points away from a likelihood of confusion.

66. The parties' marks are four letters in length and the difference occurs in the second letter. The one letter difference accounts for a quarter of the marks. Whilst there is no special test, a one letter difference in relatively short marks can make a difference.⁸ In this case, the single vowel is replaced by another consonant. This makes the applicant's mark impossible to say as a word. Since consumers have a tendency to interpret marks comprising a series of letters as words, the fact that the later mark will be read as a word that can't be pronounced also has an impact visually and points away from imperfect recollection. This is further strengthened by the conceptual counteraction described above.

67. The opponent submits that the second letter of the applicant's mark, the Z, could be represented in a font that makes it look closer to an E. It gives the following examples:



N3XT NΞXT

⁸ BL O/301/20, BOSCO, Mr James Mellor QC, sitting as the Appointed Person.

68. In *Jeremy Kerner v. Stewart Waters*, BL O/276/09, at paragraph 24, Mr Iain Purvis QC, sitting as the Appointed Person, considered whether the distinctive character of the registered mark INoTheScore had been altered by its use as I KNOW THE SCORE. Apart from the issue of Know instead of No, Mr Purvis noted that the immediate impact of the mark as registered was jarring because the interspersed capitals made the mark look strange.

69. Notional and fair use covers use of marks in lower and upper case. Notional and fair use of the opponent's mark would be *next* and NEXT. Notional and fair use of the applicant's mark would be NZXT and nzxt, and also if the letters were all represented in a particular font, as is the case for the opponent's mark in its registered form. It seems to me that notional and fair use of a word-only registration does not include swapping in and out of individual letters in an arbitrarily different style, such as that submitted by the opponent, in the examples given above. There are limits to which the hypothetical uses of the applicant's mark can be taken into account (hypotheses are what Mr Kemp's examples amount to). Artificially contrived or manufactured variances in order to resemble the opponent's mark should not be taken into account. I do not accept the opponent's submissions represented by Mr Kemp's examples or Ms Chantrielle's submissions based upon them.

70. All of the above leads away from finding a likelihood of confusion. Added to the mix is the level of distinctive character of the earlier mark because there is a greater likelihood of confusion the more distinctive the earlier mark, either *per se* or because of the use made of it (*Sabel* and *PIMKIE*, paragraph 33). I have found that the earlier mark has a low to medium level of inherent distinctive character for the goods relied upon and for retail of such goods (and no enhanced distinctiveness for the goods and services now relied upon for this ground). Such a level of distinctiveness does not pull sufficiently against the strong differences between the marks, even for identical goods and services, to point towards a likelihood of confusion.

71. Putting all of the factors together, I find that there is no likelihood of direct confusion, even in relation to the identical goods and services. These are goods and services for which the earlier mark is only distinctive to a low to medium degree and

for which there will be, at its lowest, an average degree of attention paid to the purchase. The lack of a vowel in the later mark means that it must be read and articulated as separate letters. The earlier mark has a strong and immediate concept. This will counteract the visual similarities. The later mark has no evocative force and no element which provides a 'semantic bridge' between the parties' marks. It is unlikely that the marks will be imperfectly recalled.

72. Since there is no likelihood of direct confusion, or mistaken identity, the next question is whether there is something about what the marks have in common which will lead the average consumer to believe that the parties' marks are the responsibility of the same or an economically linked undertaking. For such a belief to take place, the average consumer needs to be aware that there is a difference between the marks.⁹ The difference is the Z as the second letter of the later mark. The average consumer could not fail to notice that the later mark is not the word NEXT, that NEXT has its own strong meaning, and that the later mark cannot be pronounced as a word, but each letter would need to be said, separately. Such differences do not suggest that the marks are a brand extension or sub-branding.

73. The applicant filed evidence about its use of its mark in order to demonstrate that there is no likelihood of confusion between the marks. For the reasons given above, I find that there is no likelihood of confusion, which means that there is no need to consider such evidence. However, in case of appeal, I will record here briefly the applicant's evidence and also the reasons as to why, if I had considered it, it would have made no difference to the outcome of the section 5(2)(b) ground.

74. A director of the applicant since 1 May 2018, Mr Rob Brinkman gives evidence in a witness statement dated 3 August 2019. The applicant has manufactured computer goods since 2004, has sold over 3 million products worldwide, and has sold its goods in the UK since 2011. Such goods include PC gaming hardware and software, PC hardware and software, computer cases, cooling systems, PC monitoring software, RGB lighting and fan control (RGB is not explained), motherboards, power supplies,

⁹ *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person.

and other PC components. In 2017, the year before it filed the contested trade mark application, the applicant's UK turnover was £1,837,045. Mr Brinkman states that he has not personally encountered or been aware of any confusion between the parties.

75. Since the opponent has shown use in relation to little, if anything, that the applicant sells, it is not possible to say that the reason that Mr Brinkman has not encountered confusion is because the public has become accustomed to distinguishing between both parties in the marketplace. It is not possible to say this because there is no evidence that the opponent has sold the same goods as the applicant. The nearest goods sold by the opponent were laptops. The opponent has not provided any evidence that it has sold PC components of the type listed by Mr Brinkman. Ironically, it is the lack of evidence in this area of trade by the opponent which defeats the applicant's argument that the two have co-existed and there has been no confusion. There is little evidence of co-existence in the marketplace, and whether the goods have, in fact, been in the same marketplace: the computer goods field is vast and varied. If the average consumer has not had the opportunity to become aware of both parties' marks, it cannot be said that they have co-existed and that that co-existence has meant that the average consumer is able to distinguish between them and not confuse their trade origin. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchen L.J. stated that:

"78.the court must.... consider a notional and fair use of that mark in relation to all of the goods or services in respect of which it is registered. Of course it may have become more distinctive as a result of the use which has been made of it. If so, that is a matter to be taken into account for, as the Court of Justice reiterated in *Canon* at paragraph [18], the more distinctive the earlier mark, the greater the risk of confusion. But it may not have been used at all, or it may only have been used in relation to some of the goods or services falling within the specification, and such use may have been on a small scale. In such a case the proprietor is still entitled to protection against the use of a similar sign in relation to similar goods if the use is such as to give rise to a likelihood of confusion."

Section 5(2)(b) outcome

76. The ground of opposition under section 5(2)(b) fails.

Section 5(3) of the Act

77. Section 5(3) states:

“(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 Community trade mark or international trade mark (EC), in the European Community) 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.”

78. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-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.

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

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

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

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

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

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

79. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that its mark is similar to the applicant's mark. Secondly, that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

80. The first condition of similarity between the marks is satisfied, although the marks are visually similar to a medium level, and are not aurally or conceptually similar.

81. The next condition is reputation. The opponent relies only upon its EUTM 17607474 in relation to a long list of services in class 35. The opponent has an extensive reputation in relation to retail of clothing, footwear, accessories and homeware. This is shown by the evidence, as well as being conceded by the applicant. However, as will be apparent from my findings above, the evidence falls far short of proving a reputation in the remainder of the services relied upon. Reliance upon this ground requires evidence of a reputation amongst a significant part the relevant public. In *General Motors*, the CJEU held that:

“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.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

82. Even if it could be said that there is a reputation in the EU in relation to business services for franchisees (which is not proved), such a reputation would not transfer itself to the UK sufficiently to cause a link and, in addition, one of the three types of damage.¹⁰

83. I will, therefore, assess this ground on the basis that the opponent has an extensive reputation in the retail of clothing, footwear, accessories and homeware in the UK. The next question is whether the relevant public will make a link between the reputation in these services and the goods and services of the applicant. Although similarity of goods and services is not a requirement for section 5(3), the similarity or lack of similarity between goods and services is a factor in the assessment as to

¹⁰ See *Groupeement des Cartes Bancaires v. China construction Bank Corporation*, Mr Iain Purvis QC, sitting as the Appointed Person, at paragraph 41.

whether there is a link. The further the distance between them, the less it is likely that a link will be made.

84. Taking the applicant's class 9 goods firstly, it is difficult to see how there would be a link made with the services for which the opponent has a reputation. The assessment must be made on the basis of the registered services which have a reputation, not a hypothetical reputation as a 'retailer', per *Tulliallan Burlington Ltd v EUIPO*, Case T-123/16, in which the GC stated at paragraph 27:

"It is apparent also from the file that the applicant's earlier trade marks, which designate services in Classes 35 and 36, are known to a significant part of the public of the relevant market as being the name of a very well-known shopping arcade in the United Kingdom, located in central London, bringing together luxury boutiques within the arcade. Since that reputation of the applicant's earlier trade marks is not disputed by the parties, the question which arises, in the present case, is ultimately whether that reputation corresponds in fact to the services in Class 35 for which the earlier trade marks have been registered, so that the applicant is properly entitled to benefit from the protection of the reputation in question."

85. In Case 252/07, *Intel*, one of the factors the CJEU said should be taken into account in order to decide whether the public will make a link between the earlier mark and the later mark is "*The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered*" (emphasis added). The reputation relied on for the purposes of s.5(3) of the Act must therefore be in the goods/services covered by the trade mark(s) relied on for the purposes of the proceedings.

86. The goods which are the subject of the opponent's retail service in which it has a reputation are not similar to the applicant's goods; in fact, there is a gulf between them. Retailing of such goods is even further removed from the applicant's goods in terms of similarity. No link would be made with the opponent's services. Even if there was a link, it would be too fleeting to cause any of the pleaded types of damage. The applicant's goods are computer goods. There is no basis for a claim that the behaviour of the opponent's customers would change when the opponent's services are retailing

clothing, footwear, accessories and homeware, which is far removed from computers. There is no substance to the detriment to reputation claim as there is nothing inherently negative about either the applicant's mark or its goods. Finally, it is far from evident how a reputation in retailing clothing, footwear, accessories and homeware could give the applicant a marketing advantage in computer goods.

87. The section 5(3) ground fails in respect of the application in class 9.

88. I need to consider whether the opponent's retail of clothing, footwear, accessories and homeware (also relied upon) is similar to the applicant's retail services, in order to assess whether there will be a link in respect of the parties' respective retail services, according to the *Intel* criteria.

89. The opponent's retail of clothing, footwear, accessories and homeware are not similar to the subject goods of the applicant's retail services, which are all computer-related. There is no complementarity or shared trade channels. However, what is at issue is whether, and to what extent, there is similarity between retail services for different goods.

90. In *Praktiker Bau v Heimwerkermärkte AG*, the CJEU stated that:

“...the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.”¹¹

91. Retail services relates to the selection and marketing of goods rather than the goods themselves. There will usually be some similarities in the nature and purpose of retail services involving the selection of a range of goods and marketing those goods

¹¹ Case C-418/02

to the public, either in physical stores or online. However, it is also important to note that in *Praktiker Bau* the CJEU stated that:

“48. the likelihood of confusion must be assessed globally, taking into account all the factors relevant to the circumstances of the case (see Case C-251/95 SABEL [1997] ECR I- 6191, paragraph 22, and Case C-39/97 Canon [1998] ECR I-5507, paragraph 16). In the context of that global assessment, it is possible to take into consideration, if need be, the particular features of the concept of ‘retail services’ that are connected with its wide scope, having due regard to the legitimate interests of all interested parties.

49. In those circumstances, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. To identify those services, it is sufficient to use general wording such as ‘bringing together of a variety of goods, enabling customers to conveniently view and purchase those goods’.

50. However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings.....

51. Such details will make it easier to apply Articles 4(1) and 5(1) of the directive without appreciably limiting the protection afforded to the trade mark.”

92. The requirement to identify the goods to which the retail services relate is therefore an important aspect of defining the extent of the protection to which such trade marks are entitled. This means that retail services relating to goods X are not the same as retail services relating to goods Y. However, that does not mean that retail services cannot be similar if they relate to different categories of goods.

93. There is a certain degree of similarity between the nature, purpose and method of use of retail services relating to most consumer goods. However, this may not apply if the retail service relates to technical goods. For example, the differences between the nature, purpose and method of use of retailing of vehicles compared to other consumer goods is so marked that there is no meaningful similarity between such services.

94. In the present case, the technical goods covered by the applicant's retail services encompass computing equipment which could be both highly specialist but also of the type commonly bought by the general public, such as relatively inexpensive tablets. There is a low degree of similarity with the following of the applicant's services:

Online shopping services connected with the sale of personal computer (PC) and device components and accessories, personal computer (PC) and device hardware and software, gaming components and accessories, gaming hardware and software, computer monitoring hardware and software, computer power supplies and computer cases; retailing of computer software; retail services relating to computer software; retailing of computer hardware; retail services relating to computer hardware; retailing of computer accessories; retail services relating to computer accessories.

95. In relation to wholesaling of computer software; wholesale services relating to computer software; wholesaling of computer hardware; wholesale services relating to computer hardware; wholesaling of computer accessories; wholesale services relating to computer accessories, these are further still away from the retail services for which the opponent has a reputation. There is no meaningful level of similarity between the opponent's retail services for clothing, footwear, accessories and homeware, and the opponent's wholesale services.

96. There is more chance of a link being made in relation to the applicant's retail services because there is a low degree of similarity between the retail services in which the opponent has a reputation and the applicant's retail services (but not its wholesale services). There may be a link since the earlier mark is famous as a retailer of clothing, footwear, accessories and homeware and therefore for the bringing together of a

selection of such goods; the applicant's retail services also bring together goods for the ease of selection and purchase, albeit very different goods. However, I think that if it did occur, the link would be too weak and inconsequential to result in any of the three types of damage. It is difficult to imagine how the behaviour of the opponent's customers would be affected. In relation to unfair advantage, despite the volume of evidence, there is little evidence about the opponent's image or brand message which could show what power of attraction might be borrowed by the applicant to give it an unfair marketing advantage. The opponent's evidence includes the following, in Exhibit SLW-32, from Interbrand in 2012:

"Next, which continues to offer affordable clothing and home goods, is Europe's biggest fashion e-tailer. Its global online presence through Next Direct is at the forefront of home shopping and the Next brand stays relevant through its use of digital communications. The brand has a very interactive Facebook page and a proliferation of content on YouTube, including fashion shoots and instructional videos on beauty and makeup. However, engaging with consumers via multichannel platforms has become standard for retail brands and Next does not clearly stand out from other affordable fashion providers such as Zara and Topshop who both have unique identities. Consumers do not yet have a clear understanding of what the brand stand for and Next would do well to focus on this in the future" (emphasis added).

97. Brand reporting was more favourable to the opponent in 2014 when Interbrand said of it:

"Pioneering home delivery in 1988, Next enjoys a loyal base of cost-conscious customers who value quality, reliability and convenience. With more than 500 U.K. retail stores, a solid online channel, and a well-established phone and mail order business, its blend of fashion for the entire family and homewares keeps ringing up business....Largely regarded as safe and reliable (instead of fashion-forward) with mass market appeal, its shoppers are increasingly demanding and wooed by competitors that excel in speed to market and fast fashion. Next needs to innovate more to future-proof its brand and win new customers" (emphasis added).

98. Whilst it may be desirable in some circumstances to be linked with a brand that is safe and reliable with mass market appeal, this seems unlikely for an undertaking manufacturing and selling computer equipment. Such goods are cutting edge and technology is constantly evolving and improving. Innovation is paramount and the Interbrand evidence indicates that the opponent may be seen to be behind the curve in innovating to stay in front of the competition. Putting all of the factors together, I consider any link not strong enough to result in an advantage (fair or unfair). The section 5(3) ground fails.

Section 5(3) outcome

99. The ground of opposition under section 5(3) fails.

Overall outcome

100. The opposition fails under both grounds.

Costs

101. The applicant has been successful and is entitled to a contribution towards the costs of the proceedings, based upon the scale of costs published in Tribunal Practice Notice 2/2016. I make no award for the applicant's evidence as it was not relevant to the issues to be decided. The opponent filed a significant amount of evidence and also did not refine its long list of retail services relied upon for class 9 until the hearing (its skeleton arguments). This put the applicant to unnecessary expense in preparing for the hearing. The breakdown of the cost award is as follows:

Considering the opposition and filing the counterstatement	£450
Considering the opponent's evidence	£2000
Attendance at a hearing	£1000

Total

£3450

104. I order Next Retail Limited to pay NZXT Inc. the sum of **£3450**. This sum is to be paid within two months 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 31st day of July 2020

Mark King

For the Registrar

The Comptroller-General

Annex: EUTM 17607474

Class 35: Retail services, wholesale and franchise services, including those services offered via a general merchandising department store and clothing store, mail order catalogue, online, via television channel, via mobile phone and by direct marketing, presentation of goods on communication media, for retail purposes, provision of an on-line marketplace for buyers and sellers of goods and services, all connected with the sale of the following: Bleaching preparations and other substances for laundry use, cleaning, polishing, degreasing, scouring and abrasive preparations, soaps and gels, perfumery, essential oils and aromatic extracts, cosmetics, toiletries, hair lotions, dentifrices, perfumes, eau de toilette, shower gels, bubble baths, bath preparations, not for medical purposes, talc, deodorants, antiperspirants, aftershave, shaving preparations, shaving gel, shampoos, conditioners, hair gel, hair spray, body wash, shaving balms, moisturisers, beauty masks, foam bath, shimmer powder, body spray, tooth-powder, cream and pastes, cotton wool for cosmetic purposes, dry shampoos, nail polish, nail care preparations, nail art stickers, false nails, make-up preparations, make-up removing preparations, baby care products (non-medicated), non-medicated toilet preparations, preparations and treatments for the hair, hair removal preparations, preparations for the skin, preparations for use in the bath or shower, lotions for the care of the hands and body, non-medicated creams, for the care of the skin, non-medicated lotions for suntanning, body cleaning and beauty care preparations, oral hygiene preparations, cosmetic preparations for eyelashes, adhesives for cosmetic purposes, air fragrancing preparations, aromatic potpourris, leather and shoe cleaning and polishing preparations, wallpaper cleaning preparations, vehicle cleaning preparations, lubricants, grease for footwear, belts and leather, candles and wicks for lighting, illuminants, beeswax, Christmas tree candles, coal briquettes, firelighters, firewood, fuel (including motor spirit), dust absorbing, wetting and binding compositions, Fasteners, clips, hinges, connectors, drawer runners, screws, nuts, bolts and handles, all being items of metal hardware and all being parts and fittings for furniture, chains for dogs, dog tags, identification tags of metal for pets, metal building materials and metal furniture fittings, containers, and transportation and packaging articles, of metal, non-electric cables and wires of common metal, ironmongery, metal hardware, pipes and tubes of metal, safes, money boxes of metal, greenhouses of

metal, sheds (buildings) of metal, hooks, arbours (metal structures), articles of metal for use in the garden, doors, gates, windows and window coverings of metal, statues and works of art of common metal, bird baths [structures] of metal, door stops, handles, panels, bolts, frames and casings of metal, ladders and scaffolding of metal, locks of metal, other than electric, nails, tool boxes of metal, empty, parts and fittings for all the aforesaid goods, Machines and machine tools, machines for mixing, kneading, pulping, grinding, mincing, chopping, blending shredding, peeling, pressing and frothing foodstuffs and beverages, dishwashing machines, washing machines, drying machines, machines for airing clothes, sweeping, cleaning, washing and laundering machines, ironing machines and laundry presses, liquidisers, food processors, electric kitchen tools and knives, electric machines for preparing and processing food and drink, food waste disposal machines, agricultural implements other than hand-operated, textile and leather sewing equipment, sewing machines, bobbins for sewing machines, 3D printers, air brushes, beverage making machines, blow torches, vacuum cleaners, vacuum cleaner bags, construction equipment, gardening machines and tools (electric), hand-held tools, mechanically operated, hand-held power-operated tools, parts and fittings for all the aforesaid goods, Hand tools and implements (hand-operated), gardening and landscaping tools, hand-operated tools and implements for treatment of materials and for construction, repair and maintenance, irons, cutlery, razors, wine pourers, hair cutting and removal implements, hair styling appliances, crimping irons, curling tongs, straightening irons, hygienic and beauty implements for humans and animals, tweezers, trimmers, scissors, clippers for personal use, manicure and pedicure tools, food and drink preparation implements, zesters, slicers, barbecue forks and tongs, kitchen knives, penknives, parts and fittings for all the aforesaid goods, Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), lifesaving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, fire-extinguishing apparatus, parts and fittings for all the aforesaid goods, sunglasses, spectacles, spectacle frames, cases for spectacles and sunglasses, lenses, contact lenses, cords and chains for sunglasses,

eyeglasses, eyewear, 3D spectacles, binoculars, goggles, calculators, electronic organisers, cameras, battery chargers, camcorders, time recording devices, cassette players, compact disc players, DVD players, MP3 players excluding MP3 docking stations, televisions, amplifiers, printers, computers, computer games, computer peripheral devices excluding standalone speakers, bags adapted for laptops, radios, telephones, answering machines, baby monitors, satellite navigational apparatus, navigation, guidance, tracking, targeting and map making devices, weighing machines, magnetic encoded cards, floats for bathing and swimming, protective clothing, protective helmets, buoyancy aids, swimming floats, reflective clothing for the prevention of traffic accidents, batteries for lighting, battery chargers, buzzers, cabinets for loudspeakers, cases for photographic apparatus and instruments, cases for smartphones, cell phone straps, decorative magnets, digital photo frames, digital signs, directional compasses, divers' masks, diving suits, dog whistles, electric door bells, downloadable music and image files, egg timers, electronic publications, downloadable, magnetic encoded identification bracelets, hands free kits for telephones, head guards for sports, life-saving apparatus and equipment, magic lanterns, measuring spoons, microscopes, money counting and sorting machines, pedometers, smartglasses, smartphones, smartwatches, solar batteries, walkie-talkies, wearable activity trackers, weights, parts and fittings for all the aforesaid goods, none of the aforesaid goods including speaker docks or standalone speakers, Apparatus and installations for lighting, heating, steam generation, cooking, refrigerating, drying, ventilation, water supply and sanitary purposes, sanitary installations, water supply and sanitation equipment, toilet seats, installations for lighting, lamps, parts and fittings for the aforesaid goods, lighting and lighting reflectors, lamp bases, lampshades, light bulbs, fairy lights, decorative fountains, sprinkler and irrigations systems, bathroom apparatus and installations, burners, boilers and heaters, fireplaces, heating, ventilating, and air conditioning and purification equipment (ambient), installations and apparatus for freezing and air conditioning, hot water bottles, food and beverage cooking, heating, cooling and treatment equipment, bread-making machines, chip pans, coffee machines, barbecue apparatus, electric cooking utensils, toasters, kettles, filters for household use, personal heating and drying implements, drying installations, parts and fittings for all the aforesaid goods, Precious metals and their alloys and goods made thereof or coated therewith, jewellery, imitation jewellery, tiaras, necklaces, bracelets, earrings,

rings, jewellery cases, jewellery display stands, precious stones, semi-precious stones, clocks, watches and chronometric instruments, watch straps, watch bracelets, badges of precious metal, clock cases, cuff links, statues and figurines, made of or coated with precious or semi-precious metals or stones, or imitations thereof, jewellery boxes, key rings [trinkets or fobs] and key chains, ornamental pins, stopwatches, sundials, tie clips, tie pins, parts and fittings for all the aforesaid goods, Paper, cardboard and goods made of these materials, printed matter, bookbinding materials, photographs, stationery, adhesives for stationery or household purposes, artist materials, paint brushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging, pens, pencils, swing tags and labels, till receipts, carrier bags, accessories for home and house, namely, wall stickers, framed and unframed art pictures, framed and unframed art prints and framed and unframed art reproductions, chalk boards and memorandum boards, greetings cards, paper gift wrap, paper bags, cardboard boxes and containers, cardboard gift boxes, paper and cardboard gift tags, paper and cardboard tableware, paper and cardboard place mats, paper and cardboard table mats, paper and cardboard coasters, paper napkins and serviettes, paper table linens, paper tablecloths, wallpaper stencils, wallpaper sample books, wallpaper pattern books, paper for use in the manufacture of wallpaper, letter racks, photographs, framed pictures, wall art, photographic prints, pictures, paper picture mounts, gift vouchers, catalogues, mail order catalogues, brochures, books, diaries, magazines, calendars, newsletters, printed manuals, pamphlets, writing paper, wrapping paper and gift tags, paper or cardboard gift bags for bottles, table napkins of paper, cardboard tubes, cardboard household storage boxes, paper party bags, paper pouches for packaging, plastic bags for packaging, plastic bubble packs for wrapping or packaging, labels, namely, printed paper labels, printed shipping labels, labels and return address labels, not of textile, paper signs, advertising signs made of cardboard, paper labels, plastic bags for general use, paper and cardboard tableware, paper and cardboard cake decorations, drawer liners made of scented or unscented paper, paper handtowels, paper towels, paper garlands, paper bunting, paper banners, paper flags, hat boxes made of cardboard, figurines made of card, wallpaper stencils, wallpaper sample books, wallpaper pattern books, paper for use in the manufacture of wallpaper, pencil sharpeners, pencil cases, chalk, erasers, rubber erasers, chalk erasers, blackboard erasers, posters, notebooks, memo pads, scribble pads, writing paper,

notepaper, envelopes, date books, address books, agenda books, rubber stamps, stamp pads, folders, paper picture mounts, photo albums, postcards, greeting cards, trading cards, colouring books, children's activity books, picture books, book covers, paper book markers, bookplates, stencils for tracing designs onto paper, decals, stickers, notebook holders, document cases and holders, chequebook holders, printed publications, print advertising, adhesives [glues] for stationery or household purposes, albums, scrapbooks, bookends, desk mats, drawing materials, drawing instruments, geographical maps, glue for stationery or household purposes, pastes for household purposes, letter trays, passport holders, pen cases, boxes for pens, transfers [decalcomanias], writing materials, Leather and imitations of leather, and goods made of these materials, leather, un-worked or semi-worked, processed or unprocessed leather and hides, artificial leather, cowhide, lining leather, animal skins, hides, trunks and travelling bags, umbrellas, parasols and walking sticks, shooting sticks, whips, harness and saddlery, bags, handbags, shoulder bags, cases, suitcases, briefcases, rucksacks, belts and girdles, bags, purses, travelling cases, backpacks, duffel bags, bags for campers, shopping bags, carrier bags, furniture covering of leather, leather straps (not for clothing), pocket wallets, toilet bags, accessories for clothing and fashion, namely, purses, handbags, wallets, clutch bags, tote bags, key cases, pocket wallet holders (in the nature of wallets) for credit cards or visiting cards, toilet bags (not fitted), travelling bags, leather bags, bags of synthetic materials, wallets, attaché cases, music cases, satchels, bike bags, diaper bags, beach bags, bumbags, sports bags, casual bags, beauty cases, carriers for suits, for shirts and for dresses, tie cases, notecases, credit card cases and holders, tool bags, messenger bags, document bags, business card cases, collars for animals, hat boxes of leather, luggage tags, sling bags for carrying infants, vanity cases, Furniture, mirrors (looking glasses), picture frames, beds, bed heads, cots, sofas, sofa beds, chairs, armchairs, tables, bedside tables, bookcases, sideboards, desks, bureaux, shelves, mirrors, picture frames, chests of drawers, wardrobes, cabinets, chests, beanbags, pillows, duvets, cushions, mattresses, bedding, fireguards, baskets, curtains and blinds, footstools, upholstered footstools, tables, accessories for home and house, namely, drawer units, towel racks, decorative wall plaques made of plastics or wood, bins of wood or plastic, boards (display-), bottle racks, chests for toys, chopping blocks (table), closures (bottle-) not of metal, clothes hooks, not of metal, covers for clothing (wardrobe), cupboards, curtain hooks, curtain rails, curtain poles, curtain rings, curtain rods,

curtain rollers, curtain tie-backs, deck chairs, desk (furniture), dispensers (towel-), not of metal, fixed, door fittings, not of metal, easy chairs, flower pot pedestals, flower stands (furniture), footstools, garment covers (storage), glass (slivered-) [mirrors], high chairs for babies, infant walkers, jewellery cases [caskets], not of precious metal, keyboards for hanging keys, magazine racks, medicine cabinets, mobiles (decoration), playpens for babies, settees, showcases (furniture), sideboards, shelves for storage, stools, slatted indoor blinds, wickerwork, door stops, trophies, mortician or festival goods, wall mounted mirror, vanity mirror, hooks (clothes-) of non-metallic materials, kitchen furniture, bathroom furniture, covers for furniture, garden furniture of metal, goods of wood, namely, furniture, garden furniture, beds, bedframes, bed heads, sideboards, bunk beds, cots, futons, sofa beds, bedside tables, chests of drawers, wardrobes, dressing tables, curtain poles, blinds, sofas, chairs, arm chairs, footstools, upholstered footstools, tables, desks, bureaux, cabinets, chests, units, bookcases, boxes, storage racks, storage furniture, baskets, shelves, ornaments, picture frames, mirror frames, doors, consoles, goods of cork, namely, memo boards, notice boards, pin boards, goods of reed, namely, blinds, caskets, divans, diffusers, goods of cane, namely, caskets, containers, divans, bedroom, living room, dining room and bathroom furniture, garden furniture, goods of wicker, namely, bedroom, living room, dining room and bathroom furniture, garden furniture, chests of drawers, units, laundry bins, ornaments, goods of amber, namely, figurines, sculptures, caskets, panels, fasteners, clips, hinges, connectors, drawer runners, screws, nuts, bolts and handles, none made of metal and all being parts and fittings for furniture, baby changing mats, bed fittings, not of metal, bed bases, beds for household pets, work benches, coat hangers, clothes hangers, containers, not of metal, hampers [baskets], hand-held mirrors, hat stands, inflatable furniture, jewellery organiser displays, ladders or wood or plastics, letter boxes, not of metal or masonry, mats, removable, for sinks, removable mats or covers for sinks, mats for infant playpens, mirror tiles, nesting boxes, office furniture, plugs, not of metal, racks [furniture], screens for fireplaces [furniture], shells, shelving units, sleeping pads, sleeping mats, statues of wood, wax, plaster or plastic, step stools, not of metal, table tops, tent pegs, not of metal, trays, not of metal, umbrella stands, wind chimes [decoration], winding spools, not of metal, non-mechanical, for flexible hoses, works of art of wood, wax, plaster or plastic, parts and fittings for all the aforesaid goods, Household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), brushmaking materials, make-

up brushes and sponges, articles for cleaning purposes, steel wool, unworked or semi-worked glass (except glass used in building), plant pots and candlesticks, accessories for home and house, namely, chopping boards for kitchen use, dish drying racks, pasta bowls, household containers for foods, saucepans, cake stands, bowls, bottles sold empty, waste and refuse bins for household use, laundry bins, toothbrush holders, pet feeding and drinking bowls, bird feeders, planters for domestic gardening, laundry hampers, accessories for the home and house, namely, ornaments of china, decorative wall plaques of china, porcelain or glass, ornaments and figurines [statuettes] of porcelain, ceramic, earthenware or glass, personal outfittings, buttons, bags, pouches, jewels and their imitations, artificial flowers, toilet sets, brushes for washing dishes, scrapers for cleaning windows, clothes pegs, baskets for washing, buckets, waste paper and rubbish bins, cake moulds, photo frames, abrasive pads for kitchen purposes, abrasive sponges for scrubbing the skin, aerosol dispensers, not for medical purposes, animal bristles [brushware], apparatus for waxpolishing, non-electric, aquarium hoods, autoclaves [pressure cookers], non-electric, baby baths, portable, baking mats, basins [bowls], basins [receptacles], baskets for domestic use, basting spoons, for kitchen use, beaters, non-electric, beer mugs, bird baths, birdcages, blenders, non-electric, for household purposes, boot jacks, boot trees [stretchers], bottle gourds, bottle openers, bottles, boxes for dispensing paper towels, boxes of glass, bread baskets, domestic, bread bins, bread boards, brooms, brush goods, Brushes for cleaning tanks and containers, brushes for footwear, buckets made of woven fabrics, buckskin for cleaning, busts of porcelain, ceramic, earthenware or glass, butter-dish covers, butter dishes, buttonhooks, cages for household pets, cake moulds, candle extinguishers, candle rings, candlesticks, candy boxes, carpet beaters, not being machines, carpet sweepers, cauldrons, ceramics for household purposes, chamber pots, cheese-dish covers, china ornaments, chopsticks, cleaning instruments, hand-operated, closures for pot lids, cloths for washing floors, clothes-peg, clothes racks, for drying, clothing stretchers, coasters, not of paper and other than table linen, cocktail stirrers, coffee filters, non-electric, coffee grinders, hand-operated, coffee percolators, non-electric, coffee services [tableware], coffeepots, non-electric, comb cases, combs, combs for animals, confectioners' decorating bags [pastry bags], containers for household or kitchen use, cookery mould, cookie [biscuit] cutters, cookie jars, cooking pins of metal, cooking pot sets, cooking pots, cooking utensils, non-electric, corkscrews, cosmetic utensils, cotton waste for cleaning,

crockery, cruet sets for oil and vinegar, cruets, crumb trays, crystal [glassware], cups, cups of paper or plastic, currycombs, cutting boards for the kitchen, decanters, deep fryers, non-electric, deodorising apparatus for personal use, dish covers, dishes, dishwashing brushes, disposable table plates, drinking glasses, drinking horns, drinking straws, drinking troughs, drinking vessels, drying racks for washing, dustbins, dusting apparatus, non-electric, dusting cloths, earthenware saucepans, egg cups, electric brushes, except parts of machines, electric combs, electric devices for attracting and killing insects, enamelled glass, eyebrow brushes, feather-dusters, feeding troughs, fitted picnic baskets, including dishes, flasks, flat-iron stands, floss for dental purposes, flower-pot covers, not of paper, flower pots, fly swatters, fly traps, food cooling devices, containing heat exchange fluids, for household purposes, fruit cups, fruit presses, non-electric, for household purposes, frying pans, funnels, furniture dusters, gardening gloves, garlic presses [kitchen utensils], glass bowls, glass bulbs [receptacles], glass caps, glass flasks [containers], glass jars [carboys], glass [receptacles], glass wool other than for insulation, glove stretchers, gloves for household purposes, glue-pots, graters [household utensils], grill supports, grills [cooking utensils], hair for brushes, heat-insulated containers, heat insulated containers for beverages, heaters for feeding bottles, non-electric, holders for flowers and plants [flower arranging], horse brushes, hot pots, not electrically heated, ice cube moulds, ice pails, indoor aquaria, indoor terrariums [plant cultivation], indoor terrariums [vivariums], insect traps, ironing board covers, shaped, ironing boards, isothermic bags, jugs, kettles, non-electric, kitchen containers, kitchen mixers, non-electric, kitchen utensils, knife rests for the table, largetoothed combs for the hair, lazy susans, liqueur sets, litter trays for pets, lunch boxes, majolica, makeup removing appliances, mangers for animals, material for brush-making, menu card holders, mills for domestic purposes, hand-operated, mixing spoons [kitchen utensils], moulds [kitchen utensils], mop wringers, mops, mosaics of glass, not for building, mouse traps, mugs, nail brushes, napkin holders, napkin rings, non-electric portable coldboxes, noodle machines, hand-operated, nozzles for sprinkler hoses, opal glass, opaline glass, pails, painted glassware, paper plates, pastry cutters, pepper mills, hand-operated, pepper pots, perfume burners, perfume sprayers, pie servers, piggy banks, plates to prevent milk boiling over, plungers for clearing blocked drains, polishing apparatus and machines, for household purposes, non-electric, polishing gloves, polishing leather, porcelain ware, pot lids, pots, pottery, powder compacts, powder puffs, powdered

glass for decoration, rags for cleaning, rat traps, refrigerating bottles, rings for birds, rolling pins, domestic, roses for watering cans, salad bowls, salt cellars, saucepan scourers of metal, saucers, scoops [tableware], scouring pads, scrubbing brushes, services [dishes], shakers, shaving brush stands, shaving brushes, shoe horns, shoe trees [stretchers], sieves [household utensils], sifters [household utensils], signboards of porcelain or glass, siphons for carbonated water, smoke absorbers for household purposes, soap boxes, soap dispensers, soap holders, soup bowls, spatulas [kitchen utensils], spice sets, sponge holders, sponges for household purposes, spouts, sprinklers, statues of porcelain, ceramic, earthenware or glass, statuettes of porcelain, ceramic, earthenware or glass, steel wool for cleaning, stew-pans, strainers, strainers for household purposes, sugar bowls, syringes for watering flowers and plants, table plates, tableware, other than knives, forks and spoons, tankards, tea infusers, tea balls, tea caddies, tea cosies, tea services [tableware], tea strainers, teapots, thermally insulated containers for food, tie presses, toilet brushes, toilet cases, toilet paper dispensers, toilet paper holders, toilet sponges, toilet utensils, toothbrushes, toothbrushes, electric, toothpick holders, toothpicks, towel rails and rings, trays for domestic purposes, trays for domestic purposes, of paper, trivets [table utensils], trouser presses, urns, utensils for household purposes, vacuum bottles, vases, vegetable dishes, vessels of metal for making ices and iced drinks, waffle irons, non-electric, washing boards, washtubs, waste paper baskets, water apparatus for cleaning teeth and gums, watering cans, watering devices, wax-polishing appliances, non-electric, for shoes, whisks, non-electric, for household purposes, window-boxes, wine tasters [siphons], wool waste for cleaning, works of art of porcelain, ceramic, earthenware or glass, candelabras, candle jars [holders], car washing mitts, chamois leather for cleaning, cocktail shakers, basting brushes, bulb basters, cosmetic spatulas, crushers for kitchen use, non-electric, demijohns, drinking bottles for sports, dripping pans, earthenware/crockery, food steamers, non-electric, hip flasks, insulating flasks/vacuum bottles, kitchen grinders, non-electric, barbecue mitts, kitchen mitts, pipettes, pot holders, tortilla presses, non-electric [kitchen utensils], parts and fittings for all the aforesaid goods, Textiles and textile goods, bed and table covers, plastic material as a substitute for fabric, bed linen, table linen, household linen, wall hangings, blankets, quilts, duvets and duvet covers, sheets, pillow cases, bed valances, bed-covers, table cloths, table mats, napkins, linen fabrics, fabric wall coverings, curtains, curtain tie-backs, cushion covers, pelmets, blinds, covers for

chairs and sofas, towels and face cloths, accessories for home and house, namely, wall hangings of textile, curtains of textile, shower curtains, tea towels, textile place mats, cork placemats, leather placemats, synthetic placemats, upholstery fabrics, furniture coverings of textile, curtain holders of textile material, curtain linings, picnic blankets, travel rugs, woven fabrics for sofas (upholstery), banners, bath linen, except clothing, bath mitts, bed blankets, blankets for household pets, bunting, coasters [table linen], covers [loose] for furniture, diaper changing cloths for babies, eiderdowns [down coverlets], face towels of textile, felt, flags, not of paper, furniture coverings of plastic, handkerchiefs of textile, mattress covers, mosquito nets, place mats, not of paper, sleeping bag liners, table runners, fitted toilet lid covers of fabric, parts and fittings for all the aforesaid goods, Clothing, footwear, headgear, sports clothing, socks, maternity wear, clothing for men, women and children, namely, coats, rain coats, anoraks, parkas, blazers, jackets, cardigans, boleros, sport coats, wind resistant jackets, suits, tuxedos, vests, dresses, evening gowns, jumpers, jerseys, skirts, pants, slacks, trousers, jeans, jean shirts, jump suits, coveralls, flight suits, gym suits, jogging jerseys, blouses, tunics, sweatshirts, t-shirts, tops, halter tops, tank tops, body suits, camisoles, chemises, undershirts, slips, foundation garments, body shapers, bustiers, briefs, boxer shorts, underpants, panties, laundry, lounge wear, night gowns, night shirts, negligees, robes, pyjamas, hosiery, tights, leggings, socks, ties, neckties, bow ties, scarves, shawls, neckerchiefs, gloves, mittens, belts, swimwear, bathing suits, beachwear, beach cover-ups, sarongs, ski wear, ski suits, ski pants, ski gloves, thermal socks, infant wear, play suits, footwear, namely, shoes, boots, sandals, flip flops, thongs, pool sliders and slippers, headgear namely, hats, caps, headbands, ear warmers, ready-made clothing, clothing of leather or suede, overalls, pullovers, shirts, swimming suits, training suits, jogging suits, mufflers, ear muffs, shawls, lingerie, bras, bodices, sleep sets, waterproof clothing, dancing clothing, shorts, clothing, footwear and headgear for children and babies, clothing, footwear and headgear all for sports and leisurewear, knitwear in the nature of sweaters, footwear in the nature of trainers, joggers, namely jogging suits, hoodies, polo shirts, sweat tops, track suits, leotards, trunks, waistcoats, bridesmaid dresses, ponchos, raincoats, dressing gowns, knickers, basques, stoles, wraps, cravats, kaftans, rompers, fleeces, fleece shirts, windbreakers, aprons, clothing for babies, babies' bibs, not of paper, babies' diapers of textile, dinner jackets, braces, babies' sleepsuits, garters, sock suspenders, bandanas [neckerchiefs], special sporting and gymnastic wear, special sporting and

gymnastic footwear, ankle boots, babies' pants [underwear], bath sandals, bath slippers, bath robes, bathing caps, bathing trunks, swimsuits, beach clothes, beach shoes, berets, boas [necklets], bodices [lingerie], boot uppers, boots for sports, breeches for wear, cap peaks, caps [headwear], clothing for gymnastics, clothing of imitations of leather, collars [clothing], combinations [clothing], corselets, corsets [underclothing], cuffs/wristbands [clothing], cyclists' clothing, detachable collars, dress shields, fishing vests, fittings of metal for footwear, football shoes/football boots, footmuffs, not electrically heated, footwear uppers, fur stoles, furs [clothing], gabardines [clothing], galoshes, gymnastics shoes, half-boots, hat frames [skeletons], heelpieces for stockings, heelpieces for footwear, heels, hoods [clothing], jumper dresses, pinafore dresses, lace boots, layettes [clothing], leg warmers, masquerade costumes, money belts [clothing], motorists' clothing, neckties, non-slipping devices for footwear, outerclothing, overcoats, topcoats, paper clothing, paper hats [clothing], petticoats, pockets for clothing, ready-made linings [parts of clothing], saris, sashes for wear, shirt fronts, shirt yokes, short sleeve shirts, shower caps, ski boots, skorts, skull caps, sleep masks, slippers, inner soles, soles for footwear, spats, gaiters, sports jerseys, sports shoes, sports singlets, stocking suspenders, stockings, studs for football boots, stuff jackets [clothing], sweat-absorbent stockings, sweat-absorbent underwear and underclothing, sweatabsorbent socks, teddies [undergarments], tips for footwear, togas, top hats, trouser straps/gaiter straps, turbans, underwear/underclothing, uniforms, valenki [felted boots], veils [clothing], visors [headwear], welts for footwear, wet suits for water-skiing, wooden shoes, Lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, hair clips, appliqués [haberdashery], artificial flowers, artificial fruit, artificial garlands, artificial Christmas garlands, artificial Christmas wreaths, artificial flower arrangements in containers, artificial flower wreaths, artificial plants, artificial trees, badges for wear, not of precious metal, hair bands, decorative articles for the hair, bows for gift wrapping, brooches [clothing accessories], bra strap extenders, hair curlers, other than hand implements, hair accessories, reinforcing tape for clothing, silk flowers, silk knots, silk ribbons, shoe laces, snoods, velvet ribbons, needle cushions, tassels [haberdashery], trouser clips for cyclists, Carpets, rugs, rug grippers, floor runners, mats and matting, door mats, yoga mats, floor coverings, mats, non-textile wall coverings, wall papers, wall paper borders, decorative wall hangings, not of textile, textile wallpaper, bath mats, linoleum and other materials for covering

existing floors, carpet underlay, non-slip mats, vinyl floor coverings, parts and fittings for all the aforesaid goods, Toys, games, playthings and novelties, gymnastic and sporting articles, bags specially adapted for sports equipment, balls for playing games and sports, decorations for Christmas trees, Christmas trees of synthetic materials, artificial snow for Christmas trees, Christmas crackers, confetti, craft model kits, board games, dominoes, card games, electronic games, video game apparatus, puzzles, articles of clothing for toys and dolls, baby play things, inflatable toys, toy masks, novelties for parties, parts and fittings for all the aforesaid goods, Preserved, frozen, dried and cooked fruits and vegetables, jellies, jams, fruit and vegetable spreads, compotes, edible oils and fats, olive oil, extra virgin olive oil, sunflower oil, flavoured sunflower oil, flavoured olive oil, preserved olives, preserved chillies, marmalade, fruit conserves, dried orange peel, cranberry sauce, dried garlic, apple sauce, olive pastes, nuts, prepared, flavoured nuts, nut-based snack foods, Coffee, tea, cocoa and artificial coffee, coffee, tea and cocoa-based beverages, rice, tapioca, sago, flour and preparations made from cereals, bread, pastry and confectionery, edible ices, sugar, honey, treacle, yeast, baking-powder, baking soda, salt, mustard, vinegar, sauces (condiments), condiments, seasonings, dressings for salad, spices, ice, balsamic vinegar, white wine vinegar, dried herbs and spices, breadcrumbs, marinades, rock salt, chutneys, dried coffee, tea bags, drinking chocolate, biscuits/ cookies, gingerbread, crackers, pancakes, waffles, chocolate, chocolate-based beverages, chocolate coated nuts, sweets, marshmallows, edible decorative cake toppings, cake icing, cereal snack bars, spices for making mulled wine, cinnamon sticks, sugar, dried garlic, apple sauce, horseradish sauce, dried meat rubs, pre-prepared baking mixes for cookies and cakes, popcorn, Fresh flowers, dried flowers, plants, seeds, horticultural products, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, Beers, mineral and aerated waters and other non-alcoholic drinks, fruit beverages and fruit juices, vegetable juice, syrups and other preparations for making beverages, flavoured drink mixes, smoothies, wine, champagne, spirits, domestic electrical products namely: apparatus for lighting, heating, steam generation, cooking, refrigerating, drying, ventilation, water supply and sanitary purposes, installations for lighting, lamps, parts and fittings for the aforesaid goods, installations and apparatus all for cooking, heating, burners, boilers and heaters, fireplaces, heating, ventilating, and air conditioning and purification equipment (ambient), installations and apparatus,

all for refrigeration, freezing and air conditioning, food and beverage cooking, heating, cooling and treatment apparatus and equipment, electric cooking utensils, toasters, kettles, personal heating and drying implements, drying installations, household electric heating appliances, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, parts and fittings for all the aforesaid goods, electronic organisers, cameras, battery chargers, camcorders, time recording devices, cassette players, compact disc players, dvd players, mp3 players excluding mp3 docking stations, televisions, amplifiers, printers, computers, computer games, computer peripheral devices excluding standalone speakers, radios, telephones, answering machines, baby monitors, satellite navigational apparatus, weighing machines, batteries for lighting, battery chargers, buzzers, hands free kits for telephones, life-saving apparatus and equipment, magic lanterns, measuring spoons, microscopes, money counting and sorting machines, pedometers, smartglasses, smartphones, smartwatches, solar batteries, walkie- talkies, wearable activity trackers, parts and accessories for all the aforesaid goods, none of the aforesaid goods including speaker docks or standalone speakers, machines and machine tools, machines for mixing, kneading, pulping, grinding, mincing, chopping, blending, shredding, peeling, pressing and frothing foodstuffs and beverages, dishwashing machines, washing machines, drying machines, machines for airing clothes, sweeping, cleaning, washing and laundering machines, ironing machines and laundry presses, liquidisers, food processors, electric kitchen tools and knives, electric machines for preparing and processing food and drink, food waste disposal machines, machine coupling and transmission components (except for land vehicles), agricultural implements other than hand-operated, incubators for eggs, textile and leather sewing equipment, sewing machines, 3D printers, beverage making machines, vacuum cleaners, vacuum cleaner bags, construction equipment, gardening machines and tools (electric), hand held tools, mechanically operated, gardening and landscaping tools, hair cutting and removal implements, hair styling appliances, crimping irons, curling tongs, straightening irons, hygienic and beauty implements for humans and

animals, clippers for personal use, food and drink preparation implements; Advertising; business management; business administration; office functions; outsourcing services (business assistance); provision of outsourced administration services to business; business consultancy services; customer enquiry, comments and complaint services; telephone marketing services; consultancy, information and advisory services relating to all the aforesaid services; business management consultancy including giving assistance and advice in the establishment of retail stores in the field of the aforesaid goods; customer loyalty services for commercial, promotional and/or advertising purposes; organization and management of customer loyalty programs; organization, operation and supervision of customer loyalty schemes; organisation of fashion shows for commercial and promotional purposes; product marketing; product merchandising; promotional marketing; providing commercial information to consumers; providing consumer product information via the internet; providing information and advice to consumers regarding the selection of products and items to be purchased; wholesale ordering services; sales promotion; sales management services; provision of sales staff; consulting in sales techniques and sales programmes; advisory services relating to sales promotion; retail shop window display arrangement services; clerical services for the taking of sales orders; business administration services for processing sales made on the internet; arranging business introductions relating to the buying and selling of products; organization, operation and supervision of sales and promotional incentive schemes; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; demonstration of goods and services by electronic means, also for teleshopping and homeshopping services; sales promotion for others provided through the distribution and the administration of privileged user cards; services relating to advertising, marketing and public relations (including the organization of exhibitions and fairs for trade purposes); office services; business administration, management and consultancy services related with these matters (including the accounting services); import-export agency services; services of an expert for trade and industrial products; organization and arrangement of public auctions; consultancy, information and advisory services relating to all the aforesaid services; all the aforesaid services excluding modelling agency services.