

O-472-20

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3398101

IN THE NAME OF SIR GORDON BENNETT LTD FOR THE MARK

SIR GORDON BENNETT

IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 417711

BY INTERLUDE INTERNATIONAL GROUP

Background and pleadings

1. **Sir Gordon Bennett Ltd** (the applicant) applied to register the trade mark application no. 3398101 for the mark Sir Gordon Bennett in the UK on 9 May 2019. It was accepted and published in the Trade Marks Journal on 14 June 2019 in respect of the services as reproduced within Annex A to this decision.

2. **INTERLUDE INTERNATIONAL GROUP** (the opponent) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). This is on the basis of the earlier International Trade Mark Registration no. WE00001285284 for the mark GORDON BENNETT. The opponent's goods and services are reproduced within Annex B attached. The opposition has been based on the full list of goods and services as registered.

3. The opponent argues that the respective goods and services are identical or similar and that the marks are similar.

4. The applicant filed a counterstatement denying the claims made.

5. In its counterstatement, filed by the applicant's representative Anna Sivula of AMD Solicitors, the applicant submits that INTERLUDE INTERNATIONAL GROUP is not the registered owner of the International Registration relied upon within the opposition. The applicant states that for this reason, the opposition on ground 5(2)(b) of the Act cannot be brought by INTERLUDE INTERNATIONAL GROUP. The applicant claims the opposition should be rejected on this basis.

6. Notwithstanding the above, the applicant also submits that the opposition should be rejected due to a lack of similarity or identity between the goods and services of the respective marks. The applicant further states that alternatively, should similarity be found between the goods and services, the degree of similarity is low.

7. The applicant submits that even if similarity is found between the opponent's goods and services and the applicant's services, it remains that there will be no likelihood of confusion in the circumstances.
8. The applicant concedes that there is similarity between the marks, with the exception of 'Sir' in the applicant's mark.
9. The applicant requests that if the opposition is not rejected for the reasons above, instead the opposition be rejected, and the matter dealt with by the addition of appropriate limitations or disclaimers to the application. The applicant submits that an amendment would suffice to remove any likelihood of confusion, should any be found.
10. Within its counterstatement, the applicant has included arguments and statements with reference to the relevant consumer of its services, the similarity of the marks, and the similarity of the goods and services. I will not summarise these in full, but I will refer to them as appropriate within this decision.
11. Only the opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. As the trade mark relied upon by the opponent was under five years old at the date on which the application was filed, namely 9 May 2019, consideration of proof of use is not relevant in this instance.

Evidence

12. The opponent filed a witness statement in the name of Lucy Walker, Chartered UK and European Trade Mark Attorney at Barker Brettell LLP. Barker Brettell LLP are acting as representatives for the opponent within this opposition.
13. The purpose of Ms Walker's evidence was to adduce three exhibits, labelled BB01, BB02 and BB03, the contents of which are detailed below:

14. **Exhibit BB01**

Exhibit BB01 comprises a copy of a printout from the World Intellectual Property Office register showing International Registration no. 1285284 for GORDON BENNETT, upon which the opposition has been based. Notably, the printout is dated 20 December 2019, and shows the registered owner to be INTERLUDE INTERNATIONAL GROUP.

15. **Exhibit BB02**

Exhibit BB02 consists of the following items:

- A document referencing three parties, namely M. RIEHL Willem, SAS HOTEL METROPOLE LE BERLUGAN, and the opponent, INTERLUDE INTERNATIONAL GROUP. The document appears to be in the French and is signed by the aforementioned parties on the 6 and 7 August 2019;
- A letter written on headed paper belonging to the Greater Birmingham Chambers of Commerce, dated 8 January 2020 and signed by Shazia Khaliq on behalf of the Chamber Translation Services. The letter attests that the annexed 'Trademark Transfer Contract' was translated by registered and qualified translator Mr. Paul Machin on 8 January 2020, and is to the best of their knowledge, a faithful and accurate translation of the original document;
- A further signed statement from the aforementioned Mr. Paul Machin, stating that to the best of his knowledge, the annexed 'Trademark Transfer Document' represents a faithful and accurate translation of the original version;
- The annexed translation of the 'Trademark Transfer Document', detailing the full and complete transfer of, inter alia, International Registration no. 1285284 from Mr Willem RIEHL to INTERLUDE INTERNATIONAL GROUP.
- A completed and signed document MM5(f). An English translation of this document has not been provided, so whilst it is presumed that this shows an application to record the transfer at the World Intellectual Property Office, this will not be taken as fact for the purpose of this decision.

16. **Exhibit BB03**

Exhibit BB03 includes a letter from the UK Intellectual Property Office (UK IPO), addressed to the Barker Brettell LLP as the representative for the opponent INTERLUDE INTERNATIONAL GROUP. The letter confirms that the TM7 document filed in respect of UK application no. UK00003398101 and opposition no. OP000417711 was received by the UK IPO on 16 September 2019 and has been sent to the applicant.

17. No hearing was requested, and no written submissions were filed in lieu of a hearing by either party. This decision is taken following a careful perusal of the papers.

Preliminary issues

18. The applicant states within its TM8 and counterstatement that the opponent is not the registered owner of the International Registration relied upon within the opposition. The applicant submits that the opposition cannot therefore be brought by the opponent on these grounds. The applicant requests that the opposition be rejected on this basis.

19. It is possible that INTERLUDE INTERNATIONAL GROUP were not yet showing as the recorded owner of the International Registration no. WE00001285284 on the UK Intellectual Property Office Register at the time the applicant made its counterstatement. However, I am satisfied from the opponent's evidence that INTERLUDE INTERNATIONAL GROUP was the legal owner of the earlier mark at the time of filing both the Notice of Possible Opposition (TM7a) and the Notice of Opposition (TM7).

20. Furthermore, I am satisfied that INTERLUDE INTERNATIONAL GROUP has now been recorded as the legal owner of the mark upon which the opposition has been based, on both the International and the UK register. I therefore find no

reason to reject the opposition on this basis. Instead, it is my view that the outcome of the opposition should be decided on Section 5(2)(b) of the Act.

21. In paragraph I. of its counterstatement, the applicant has requested that the opponent “proves whether there is any likelihood of confusion in the circumstances”. For clarity, I note here that although there is an opportunity for both parties to file evidence to assist their case in respect of an opposition of ground 5(2)(b) of the Act, there is no requirement for the opponent to prove, by way of filing evidence further than the existence (and ownership) of an earlier confusingly similar right, that this likelihood of confusion exists. Nor is there a requirement to show actual confusion in the market. Instead, the Hearing Officer (that being myself in this instance) is entitled to look simply at the marks in question and the goods or services for which they have been registered (or used if required), and apply his or her own common knowledge alongside the relevant authorities to determine if a likelihood of confusion will exist between the marks in question¹. I will therefore continue with my assessment of the likelihood of confusion on this basis.

DECISION

22. Section 5(2)(b)

Section 5(2)(b) of the Act is as follows:

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

(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

¹ See L.J. Arden’s comments at paragraph 54 of *esure Insurance Ltd v Direct Line Insurance Plc*, [2008] EWCA Civ 842 in which she states “I see no reason why the hearing officer should not have decided the issue of similarity on his own in the absence of evidence apart from the marks themselves and evidence as to the goods or services to which they were, or, in the case of esure’s mark, were to be applied”.

the public, which includes the likelihood of association with the earlier trade mark”.

23. Section 5A

Section 5A of the Act is as follows:

- a. “5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

The principles

24. The following principles are gleaned from the decisions of the Court of Justice of 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.

(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

25. In paragraph 4(c)(i) of its counterstatement, the applicant states “The applicant’s trade mark is proposed only to be registered in respect of class 35”. The applicant goes on to say “The existing mark is not registered in class 35. It is therefore denied that the retail services listed in the applicant’s mark are identical or similar to the goods and services covered by the existing mark.” Later, in paragraph g., the applicant makes the further statement “Whilst it is accepted that there are circumstances where there may be a likelihood of confusion between a mark registered in relation to retail services and an identical or similar mark registered in relation to goods which are capable of being sold through retail services, it is denied that a likelihood of confusion arises in the circumstances.”

26. Considering the applicant’s comments made in paragraph g. of its counterstatement, it appears the applicant already has an understanding that the class within which certain goods and services fall is not determinative of similarity or dissimilarity with other goods or services in the same, or in different classes. However, for clarification, I have set out Section 60A of the Act below.

Similarity of goods and services – Nice Classification

27. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

28. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

29. In addition, it was established by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, that the following additional criteria is also relevant for an assessment of similarity of goods and services:

(a) The respective users of the respective goods or services;

(b) The respective trade channels through which the goods or services reach the market;

- (c) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

30. Within its “similarity of goods and services” section of its counterstatement, the applicant references its website. The applicant states that this shows the focus of its business is on the curation of goods. The applicant submits that the website clearly states it does not manufacture the goods. The applicant also states that it does not offer bricks and mortar retail. The applicant did not file evidence of these factors during the evidence rounds, however, the conditions under which the applicant’s services are currently being marketed are not relevant for the comparison of goods and services, or indeed the assessment of likelihood of confusion, as these may change over time. Instead, it is the typical conditions under which the goods or services (as registered or applied for) are sold as that must be considered, within the parameters set out in the case law above. On this point, the CJEU stated within *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P as follows:

- a. “59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.”

31. The case law provides further guidance on how the wording of goods and services as registered and filed should be interpreted within the comparison. 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."

32. 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."*

33. With these factors in mind, the goods and services for comparison are below:

Opponent's goods	Applicant's goods
<p>Class 3: Soaps; essential oils; cosmetics, hair lotions, deodorants for personal use (perfumery), dentifrices; perfumery products; perfumes; room fragrances, air freshening products; perfumed substances for indoor perfume dispensers; scented water, toilet water, flower extracts, bases for flower perfumes; scented wood; pot-pourri and perfumed incense; perfumed paper, products for perfuming linen; perfumed sachets; bleaching preparations and other substances for laundry use, laundry preparations; cleaning, polishing, degreasing and abrasive preparations.</p> <p>Class 16: Printing products (printed matter); bookbinding material; photographs; stationery; adhesives (glues) for stationery or household purposes; artists' materials; paintbrushes; typewriters and office requisites (except furniture); instructional or teaching material (except apparatus); printing type; printing blocks; paper; cardboard; boxes of cardboard or paper; posters; albums; cards; books; newspapers;</p>	<p>Class 35: Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -); Retail services connected with stationery; Retail services connected with the sale of clothing and clothing accessories; Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing beers; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with the sale of subscription boxes containing food; Retail services for computer software; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for works of art provided by art galleries; Retail services in relation to agricultural equipment; Retail services in relation to alcoholic beverages (except beer); Retail services in relation to animal grooming preparations; Retail services in relation</p>

prospectuses; pamphlets; calendars; writing instruments; engravings or lithographic works of art; paintings (pictures), framed or unframed; aquarelles; patterns for dressmaking; drawings, drawing instruments; handkerchiefs of paper; face towels of paper; table linen of paper; toilet paper; bags and small bags (envelopes, pouches) of paper or plastic for packaging; garbage bags of paper or of plastics.

Class 18: Leather and imitation leather; animal skins; leather articles, namely traveling bags, beach bags, handbags, rucksacks, satchels, card cases, wallets, purses not of precious metal, school bags, briefcases, trunks, suitcases, traveling trunks, umbrellas, parasols, walking sticks, whips, harnesses and saddlery.

Class 21: Candlesticks of glass, porcelain, crystal and earthenware; crockery sets and tableware services of precious metal, table plates; tea services and tea services of precious metal; coffee services and coffee services of precious metal; cups, saucers, liqueur services and liqueur services of precious metal; drinking glasses; drinking vessels, bottles,

to art materials; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to bags; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to beauty implements for animals; Retail services in relation to beauty implements for humans; Retail services in relation to bedding for animals; Retail services in relation to beer; Retail services in relation to bicycle accessories; Retail services in relation to building materials; Retail services in relation to car accessories; Retail services in relation to chemicals for use in agriculture; Retail services in relation to chemicals for use in forestry; Retail services in relation to chemicals for use in horticulture; Retail services in relation to chocolate; Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations; Retail services in relation to clothing; Retail services in relation to clothing accessories; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to computer software; Retail services in relation to confectionery; Retail services in relation

decanter; kitchen utensils and kitchen utensils of precious metal; dishes; trays for domestic use, soup tureens, vegetable dishes, bowls, butter-dish and cheese plate covers, butter dishes, boxes for sweetmeats, egg cups and egg cups of precious metal, fruit bowls, salt cellars, pepper pots, sugar bowls; corkscrews, bottle openers, rails and rings for napkins; jars, tea boxes, tea infusers, table mats (table utensils); ice buckets; cake molds; ice molds; cruet stands for oil and vinegar; kitchen ladles (basting spoons); bread baskets and boards; pie servers, pipettes (wine-tasting cups), skewers namely metal needles for cooking; knife rests for the table; napkin rings, spatulas and mixing spoons (kitchen utensils), spice sets, table centerpieces; cooking pot sets; toothpicks; and toothpick holders; candle holders, powder compacts, perfume burners, candelabra, namely candlesticks, candle holders, flasks, opaline glass; busts, statuettes and statues made of porcelain, terra cotta or glass; pottery; flower pots and vases; household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes), brush-making materials; articles for cleaning purposes; steel wool; unworked or

to construction equipment; Retail services in relation to cookware; Retail services in relation to cooling equipment; Retail services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail services in relation to cutlery; Retail services in relation to dairy products; Retail services in relation to desserts; Retail store services in the field of clothing; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -); Retail services connected with stationery; Retail services connected with the sale of clothing and clothing accessories; Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing beers; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with the sale of subscription boxes containing food; Retail services for works of art provided by art galleries; Retail services in relation to agricultural equipment; Retail services in relation to alcoholic beverages (except beer);

<p>semi-worked glass (except building glass).</p> <p>Class 24: Fabrics; table linen of textile; bath linen (except clothing); household linen; face towels of textile; curtains of textile material.</p> <p>Class 32: Beers; mineral and aerated waters; beverages based on fruit and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars; soda water; non-alcoholic aperitifs; beers; mineral and aerated waters; beverages based on fruit and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars; soda water; non-alcoholic aperitifs; non-alcoholic cocktails.</p> <p>Class 33: Alcoholic beverages (except beers); wines; alcoholic aperitifs; alcoholic cocktails; digesters (alcohol and liqueurs); alcoholic essences; alcoholic extracts.</p> <p>Class 43: Hotel services, temporary accommodation, provision of food and drink, bar services; ice cream services; tea rooms; pancake houses; food and drink catering; reservation of hotels and restaurants; provision of catering</p>	<p>Retail services in relation to animal grooming preparations; Retail services in relation to art materials; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to bags; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to beauty implements for animals; Retail services in relation to beauty implements for humans; Retail services in relation to bedding for animals; Retail services in relation to beer; Retail services in relation to bicycle accessories; Retail services in relation to building materials; Retail services in relation to car accessories; Retail services in relation to chocolate; Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations; Retail services in relation to clothing; Retail services in relation to clothing accessories; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to confectionery; Retail services in relation to construction equipment; Retail services in relation to cookware; Retail services in relation to cooling equipment; Retail</p>
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<p>facilities for meetings, conferences and exhibitions, namely rental of rooms; restaurant services; provision of catering facilities and hosting at social events and receptions (weddings), namely rental of rooms; banquet halls and reception rooms used for special occasions (terms too vague in the opinion of the international Bureau-rule 13.2.b) of the common regulations).</p>	<p>services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail services in relation to cutlery; Retail services in relation to dairy products; Retail services in relation to desserts; Retail services in relation to dietary supplements; Retail services in relation to disposable paper products; Retail services in relation to diving equipment; Retail services in relation to domestic electrical equipment; Retail services in relation to domestic electronic equipment; Retail services in relation to downloadable electronic publications; Retail services in relation to downloadable music files; Retail services in relation to earthmoving equipment; Retail services in relation to educational supplies; Retail services in relation to fabrics; Retail services in relation to fashion accessories; Retail services in relation to festive decorations; Retail services in relation to floor coverings; Retail services in relation to fodder for animals; Retail services in relation to food cooking equipment; Retail services in relation to food preparation implements; Retail services in relation to foodstuffs; Retail services in relation to footwear; Retail services in relation to fragrancings preparations; Retail services in relation</p>
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	<p>to freezing equipment; Retail services in relation to frozen yogurts; Retail services in relation to fuels; Retail services in relation to furnishings; Retail services in relation to furniture; Retail services in relation to games; Retail services in relation to gardening articles; Retail services in relation to gardening products; Retail services in relation to hair products; Retail services in relation to hand-operated implements for construction; Retail services in relation to hand-operated tools for construction; Retail services in relation to headgear; Retail services in relation to hearing protection devices; Retail services in relation to heaters; Retail services in relation to heating equipment; Retail services in relation to horticulture equipment; Retail services in relation to horticulture products; Retail services in relation to hygienic implements for animals; Retail services in relation to hygienic implements for humans; Retail services in relation to ice creams; Retail services in relation to information technology equipment; Retail services in relation to jewellery; Retail services in relation to kitchen appliances; Retail services in relation to kitchen knives; Retail services in relation to lighting; Retail services in relation to litter for animals; Retail services in relation to</p>
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	<p>lubricants; Retail services in relation to luggage; Retail services in relation to meats; Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Retail services in relation to metal hardware; Retail services in relation to mobile phones; Retail services in relation to musical instruments; Retail services in relation to navigation devices; Retail services in relation to non-alcoholic beverages; Retail services in relation to paints; Retail services in relation to pet products; Retail services in relation to physical therapy equipment; Retail services in relation to preparations for making alcoholic beverages; Retail services in relation to preparations for making beverages; Retail services in relation to printed matter; Retail services in relation to pushchairs; Retail services in relation to recorded content; Retail services in relation to refrigerating equipment; Retail services in relation to saddlery; Retail services in relation to safes; Retail services in relation to sanitary installations; Retail services in relation to sanitation equipment; Retail services in relation to seafood; Retail services in relation to sewing articles; Retail services in relation to sex aids; Retail services in relation to smartphones; Retail services in relation</p>
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	<p>to smartwatches; Retail services in relation to sorbets; Retail services in relation to sporting articles; Retail services in relation to sporting equipment; Retail services in relation to stationery supplies; Retail services in relation to sun tanning appliances; Retail services in relation to tableware; Retail services in relation to teas; Retail services in relation to threads; Retail services in relation to time instruments; Retail services in relation to tobacco; Retail services in relation to toiletries; Retail services in relation to toys; Retail services in relation to umbrellas; Retail services in relation to vehicles; Retail services in relation to veterinary apparatus; Retail services in relation to veterinary articles; Retail services in relation to veterinary instruments; Retail services in relation to veterinary preparations; Retail services in relation to wall coverings; Retail services in relation to water supply equipment; Retail services in relation to weapons; Retail services in relation to wearable computers; Retail services in relation to works of art; Retail services in relation to yarns; Retail services relating to alcoholic beverages; Retail services relating to audiovisual equipment; Retail services relating to automobile accessories; Retail services relating to</p>
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	<p>automobile parts; Retail services relating to candy; Retail services relating to clothing; Retail services relating to delicatessen products; Retail services relating to fake furs; Retail services relating to flowers; Retail services relating to food; Retail services relating to food preparation implements; Retail services relating to fragrancings preparations; Retail services relating to fruit; Retail services relating to furniture; Retail services relating to furs; Retail services relating to home textiles; Retail services relating to horticultural equipment; Retail services relating to horticultural products; Retail services relating to jewelry; Retail services relating to kitchen knives; Retail services relating to live animals; Retail services relating to sporting goods; Retail services via catalogues related to alcoholic beverages (except beer); Retail services via catalogues related to beer; Retail services via catalogues related to foodstuffs; Retail services via catalogues related to non-alcoholic drinks; Retail services via global computer networks related to alcoholic beverages (except beer); Retail services via global computer networks related to beer; Retail services via global computer networks related to foodstuffs; Retail services via global</p>
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	<p>computer networks related to non-alcoholic beverages; Retail shop window display arrangement services; Retail store services in the field of clothing; Mail order retail services connected with clothing accessories; Mail order retail services for clothing; Mail order retail services for clothing accessories; Mail order retail services for cosmetics; Mail order retail services related to alcoholic beverages (except beer); Mail order retail services related to beer; Mail order retail services related to foodstuffs; Mail order retail services related to non-alcoholic beverages; Online retail services relating to clothing; Online retail services relating to cosmetics; Online retail services relating to handbags; Online retail services relating to jewelry; Online retail services relating to luggage; Online retail services relating to toys; Online retail store services in relation to clothing; Online retail store services relating to clothing; Online retail store services relating to cosmetic and beauty products.</p>
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34. I note firstly that there is some repetition within the applicant's specification, with several identical services repeated two or more times. I will not repeat my reasoning for each of the applicant's identical services, however I will, where

possible, group these identical services together for the sake of the comparison. Where there is a finding of similarity, or lack thereof in respect of one of the terms within the applicant's specification, it follows that the same can be assumed for further identical terms.

35. I further note that the applicant's specification contains various services relating to retail only, whereas the opponent's specification contains mainly (although not entirely) goods. I will therefore consider the findings of the relevant authorities with regards to the comparison of goods and services, prior to carrying out my assessment.

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

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

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

criteria for determining whether, when and to what degree services are ‘similar’ to goods are not clear cut.”

38. However, on the basis of the European courts’ judgments in *Sanco SA v OHIM*², and *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).

39. It is clear from the case law above that in all instances where the applicant’s retail services are to be compared to the opponent’s goods, the retail services will be different in nature, purpose and method of use to the goods. However, I take

² Case C-411/13P

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

⁴ Case C-398/07P

from the above that despite these differences, where there is some complementarity and shared trade channels, retail services *may* be similar to goods. It is equally clear from the above that complementarity alone will not suffice for a finding of similarity, where from the consumers point of view, the retail services of the applicant would not normally be offered by the same undertaking as the goods. Furthermore, it is noted that I must not treat the retail services as goods, although consideration of the retail services normally associated with the opponent's goods should be made. I will consider these factors throughout my assessment.

Online retail services relating to cosmetics; Mail order retail services for cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with stationery; Retail services connected with stationery; Retail services in relation to stationery supplies; Retail services in relation to art materials; Retail services in relation to art materials; Retail services in relation to printed matter; Retail services in relation to saddlery; Retail services in relation to umbrellas; Retail services in relation to bags; Online retail services relating to handbags; Retail services in relation to bags; Retail services in relation to luggage; Online retail services relating to luggage; Retail services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail services in relation to fabrics; Retail services in relation to preparations for making beverages; Retail services in relation to beer; Retail services via catalogues related to beer; Retail services via global computer networks related to beer; Mail order retail services related to beer; Retail services in relation to beer; Retail services connected with the sale of subscription boxes containing beers; Retail services connected with the sale of subscription boxes containing beers; Retail services via catalogues related to alcoholic beverages (except beer); Retail services via global computer networks related to alcoholic beverages (except beer); Retail services relating to alcoholic beverages; Retail services in relation to alcoholic beverages (except beer);

Retail services in relation to alcoholic beverages (except beer); Mail order retail services related to alcoholic beverages (except beer); Online retail store services relating to cosmetic and beauty products; Retail services in relation to toiletries; Retail services in relation to hair products

40. The above services within the applicant's specification all relate to various types of retail services, be it via traditional stores, catalogues and mail order, online, or via subscription. All of the goods to which the above services relate are covered using identical or near identical terminology, within the opponent's specification of goods.

41. With reference to the comments of the General Court within paragraph 48 of *Oakley*, I find that retail services are rarely offered in places where the corresponding goods are not sold⁵. In respect of all the applicant's services mentioned above, and the opponent's goods which are the subject of these services, I find the trade channels will be shared.

42. Furthermore, at paragraph 54 in *Oakley*, the General Court confirmed that when retail services relate to the specific goods in question, those services will be provided at the point at which the goods are sold. The General Court stated that the goods which are the subject of the retail services must therefore, at the very least be important to the goods, if not indispensable as "Such services, which are provided with the aim of selling certain specific goods, would make no sense without the goods".

43. I find that where the opponent's goods are the subject of the applicant's retail services, those goods are indispensable to the applicant's services, as these would not exist without the goods themselves. It is my view that this establishes a complementarity between the opponent's goods and the applicant's

⁵The General Court stated at paragraph 48 of *Oakley, Inc v OHIM*, Case T-116/06 "it is correct, as rightly pointed out by the Board of Appeal in paragraph 22 of the contested decision, that retail services can be offered in the same places as those in which the goods in question are sold, as the applicant has also recognised. The Board of Appeal's finding that retail services are rarely offered in places other than those where the goods are retailed and that consumers need not go to different places to obtain the retail service and the product they buy, must therefore be upheld."

corresponding services, which is sufficiently pronounced for the consumer to assume the goods and services will be offered by the same undertaking.

44. It is also my view that the intended user of the applicant's services, will at least in the most part be identical to the intended user of the opponent's goods to which they apply, although the possibility of the items being purchased on behalf of another party will exist. I find this to be the case in respect of all the retail services for which the opponent's goods are the subject.

45. For the reasons given, I therefore find a medium level of similarity between the applicant's services listed above and the opponent's corresponding goods.

Retail services in relation to fragrancing preparations; Retail services relating to fragrancing preparations;

46. The opponent's earlier mark protects the goods *perfumery products; perfumes; room fragrances, air freshening products; perfumed substances for indoor perfume dispensers; scented water, toilet water, flower extracts, bases for flower perfumes; scented wood; pot-pourri and perfumed incense; perfumed paper, products for perfuming linen; perfumed sachets;* amongst other goods in class 3. It is my view these all fall within the meaning of fragrance preparations.

47. For the reasons outlined in paragraphs 41 – 44 of this decision, I therefore find the applicant's services *Retail services in relation to fragrancing preparations; Retail services relating to fragrancing preparations* similar to the opponent's goods to a medium degree.

Retail services in relation to animal grooming preparations; Retail services in relation to animal grooming preparations;

48. The opponent's goods include *soaps* in class 3. I find *animal grooming preparations* to include *soaps*.

49. For the reasons outlined in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to animal grooming preparations; Retail services in relation to animal grooming preparations;* are similar to the opponent's goods *cosmetics* to a medium degree.

Retail services in relation to beauty implements for humans; Retail services in relation to beauty implements for humans; Retail services in relation to hygienic implements for humans;

50. The opponent's goods include *combs and sponges; brushes (except paint brushes)* within their class 21 goods. It is my view these goods fall within the natural meaning of beauty implements, as these items are tools used both for home beauty and by those in the beauty industry such as make-up artists. Further, I find the goods including sponges and brushes (which will include tooth brushes and sponges for washing) as included within the opponent's specification to fall within the meaning of *hygienic implements*.

51. For the reasons outlined in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to beauty implements for humans; Retail services in relation to beauty implements for humans; Retail services in relation to hygienic implements for humans;* similar to the opponent's goods to a medium degree.

Retail services in relation to beauty implements for animals; Retail services in relation to hygienic implements for animals;

52. As mentioned above, the opponent's goods include *combs and sponges; brushes (except paint brushes)* within their class 21 goods. It is my view these goods fall within the natural meaning of beauty implements for animals, as these items are tools used for animal grooming. Further, I find the goods including

sponges and brushes (which will include sponges for washing and brushes for grooming and animal tooth brushes) as included within the opponent's specification to fall within the meaning of *hygienic implements*.

53. For the reasons outlined in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to beauty implements for animals; Retail services in relation to hygienic implements for animals*; similar to the opponent's goods to a medium degree.

Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations; Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations

54. The opponent's goods include *bleaching preparations and other substances for laundry use, laundry preparations; cleaning, polishing, degreasing and abrasive preparations*. It is my view that these goods fall within the meaning of *cleaning preparations*. Furthermore, it is my view that the sponges and brushes falling within class 21 fall within *cleaning articles*.

55. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations* similar to the opponent's goods to a medium degree.

Retail services in relation to paints;

56. The opponent's specification covers the goods *artists' materials* in class 16. It is my view these goods include paints.

57. For the reasons given in paragraphs 41 - 44 of this decision, I find the applicant's services *Retail services in relation to paints*; to be similar to the opponent's goods *artists' materials* to a medium degree.

Retail services in relation to gardening articles; Retail services in relation to gardening products; Retail services in relation to horticulture equipment; Retail services in relation to horticulture products; Retail services relating to horticultural equipment; Retail services relating to horticultural products;

58. The opponent's specification covers the goods *flower pots and vases*. It is my view that flower pots in particular fall within the meaning of gardening articles, gardening products, horticultural equipment, and horticultural products.

59. For the reasons given in paragraphs 41 - 44 of this decision, I find the applicant's services *Retail services in relation to gardening articles; Retail services in relation to gardening products; Retail services in relation to horticulture equipment; Retail services in relation to horticulture products; Retail services relating to horticultural equipment; Retail services relating to horticultural products;* to be similar to the opponent's goods *flower pots* to a medium degree.

Retail services relating to flowers

60. The retail of flowers in larger shops or gardening specific shops will nearly always be alongside the sale of flower pots, as included within the opponent's specification. There will be an overlap of trade channels between the goods and services. Further, I find the applicant's services to be complementary to the opponent's goods, in the sense that flowers and the retail thereof is important for the use of the opponent's goods *flower pots*. Further, I find the intended users to overlap.

61. Whilst I find the retail services for flowers to be slightly further removed than retail services for flower pots, I find retail services for flowers remain similar to the opponent's goods *flower pots* to a low degree.

Retail services in relation to educational supplies

62. The opponent's goods include *instructional or teaching material (except apparatus)* and other items in class 16. It is my view that these goods will fall within the meaning of the term *educational supplies*.

63. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to educational supplies* to be similar to the opponent's goods to a medium degree.

Retail services in relation to downloadable electronic publications; Retail services in relation to recorded content

64. The opponent's goods include items such as *Printing products (printed matter) and instructional or teaching material (except apparatus); books and newspapers*. Although the opponent's goods do not include the downloadable or recorded versions, it is my view that where physical copies of these products are available, an electronic or recorded version will often be provided by the same undertaking, and commonly the consumer may purchase both a physical and a downloadable or recorded copy of a particular publication within the same transaction. However, it is clear from the case law that I must not base a finding of similarity on the fact the goods which are the subject of retail services are similar to another set of goods per se⁶.

65. I find that trade channels will be often be shared by the retail services for the downloadable electronic publications and recorded content, and the opponent's goods, and that the applicant's services belong to the same market sector as the goods, namely the publishing sector. Further, I find that the intended users are also shared.

⁶ In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. sitting as the appointed person concluded on the basis of the European courts' judgments in *Sanco SA v OHIM* (Case C-411/13P), and *Assembled Investments (Proprietary) Ltd v. OHIM* (Case T-105/05, at paragraphs [30] to [35] of the judgment), upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* (Case C-398/07P), it is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X. .

66. I find there to be a level of complementarity between these services and the opponent's goods, due to the fact the retail services are often offering the opponent's goods and the goods to which the retail services relate to the consumer within a single transaction.

67. With consideration of the above, and to the differences between the goods and services, I find the applicant's services *Retail services in relation to downloadable electronic publications* to be similar to the opponent's goods to a low degree.

Retail services for computer software; Retail services in relation to computer software

68. I note the potential for computer software as a product to be somewhat similar to the opponent's class 16 goods *instructional or teaching material (except apparatus)*, within the opponent's specification. However, computer software falls broadly within a different market sector to the opponent's goods, and whilst trade channels may be shared, I find any complementarity to between these services and the opponent's goods to be insufficiently pronounced for the consumer to assume they derive from the same undertaking.

69. I find these services to be dissimilar to the opponent's goods.

Retail services in relation to disposable paper products;

70. The opponent's goods include items such as *face towels of paper; table linen of paper; toilet paper; bags and small bags (envelopes, pouches) of paper or plastic for packaging; garbage bags of paper* all of which fall into the category of disposable paper products.

71. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to disposable paper products* similar to the opponent's goods to a medium degree.

Retail services in relation to cookware; Retail services in relation to cookware; Retail services in relation to cutlery; Retail services in relation to food cooking equipment; Retail services in relation to food preparation implements; Retail services in relation to cutlery; Retail services in relation to kitchen knives; Retail services in relation to tableware; Retail services relating to food preparation implements; Retail services relating to kitchen knives;

72. Items including *crochery sets and tableware services of precious metal, table plates; tea services and tea services of precious metal; coffee services and coffee services of precious metal; kitchen utensils and kitchen utensils of precious metal; cooking pot sets; household or kitchen utensils and containers; and cups, saucers, liqueur services and liqueur services of precious metal; drinking glasses; drinking vessels, bottles, decanters* are all included within the opponent's goods registered in class 21. It is my view that the goods to which the applicant's retail services above apply are all protected within the opponent's registration.

73. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the above services similar to the opponent's goods to a medium degree.

Retail services in relation to pet products

74. I find the term *pet products* to be broad, and to include dishes, bowls and brushes as included within the opponent's class 21 goods.

75. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the above services similar to the opponent's goods to a medium degree.

Retail services in relation to domestic electrical equipment; Retail services in relation to domestic electronic equipment; Retail services in relation to kitchen appliances; Retail services in relation to cooling equipment; Retail services in relation to cooling equipment; Retail services in relation to refrigerating equipment; Retail services in relation to heaters; Retail services in relation to heating equipment;

76. The retail of items such as the above may be provided in the same stores as many of the opponent's goods, such as *kitchen utensils*, and so trade channels may be shared. They may very broadly share consumers, namely the general public looking to fit out a kitchen. However, the goods are not complementary in the sense that they indispensable to one another, and where on occasion they may be important for one another it is my view this is not sufficiently pronounced. Whilst on occasion an undertaking may offer both these items and kitchen utensils, I do not believe this will be assumed as the norm by consumers, and this becomes further removed in respect of retail services.

77. I therefore find *Retail services in relation to domestic electrical equipment; Retail services in relation to domestic electronic equipment; Retail services in relation to kitchen appliances; Retail services in relation to cooling equipment; Retail services in relation to cooling equipment; Retail services in relation to refrigerating equipment; Retail services in relation to heaters; Retail services in relation to heating equipment;* to be dissimilar to the opponent's goods.

Retail services for works of art provided by art galleries; Retail services for works of art provided by art galleries; Retail services in relation to works of art;

78. The opponent's goods covers *busts, statuettes and statues made of porcelain, terra cotta or glass*; all of fall within the category of works of art (provided by art galleries or otherwise).

79. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the above services similar to the opponent's goods to a medium degree.

Retail services relating to fake furs; Retail services relating to furs;

80. Within its protection for goods in class 18, the opponent has included *Leather and imitation leather; animal skins*. I find these goods to be highly similar if not identical to the goods for which the applicant's retail services apply. Whilst these goods and services may not always be indispensable to one another, in the sense that retail of leather or imitation leather or animal skins is not always strictly required for the retail of fake or real furs or vice versa, it is my view that often these furs will be sold as animal skins or on leather or imitation leather, meaning it will often be the case that they are indispensable, if not important for the other. I find that the retail services for these items will often be the same undertaking that is responsible for the goods themselves, and the trade channels and intended users are shared.

81. I find the services *Retail services relating to fake furs; Retail services relating to furs* similar to the opponent's goods to a medium degree.

Retail services connected with the sale of clothing and clothing accessories;
Retail services in relation to clothing accessories; Retail services in relation to clothing;
Retail store services in the field of clothing; Retail services connected with the sale of clothing and clothing accessories; Retail services in relation to clothing;
Retail services in relation to clothing accessories; Retail services relating to clothing;
Retail store services in the field of clothing ;Mail order retail services connected with clothing accessories; Mail order retail services for clothing;
Mail order retail services for clothing accessories;
Online retail services relating to clothing; Online retail store services in relation to clothing;
Online retail store services relating to clothing;

Retail services in relation to footwear; Retail services in relation to headgear

82. The applicant uses the term *retail services in relation to clothing accessories*. I refer to *Gitana SA v OHIM*, Case T-569/11 Page 34 of 61, in which the GC refers to *clothing accessories* as follows:

- a. “Moreover, in respect of the relationship between the ‘goods in leather and imitations of leather’ in Class 18 covered by the trade mark sought and the goods in Class 25 covered by the earlier mark, it is apparent also from settled case-law that the ‘goods in leather and imitations of leather’ include clothing accessories such as ‘bags or wallets’ made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image (‘look’) of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased.”

83. It is clear from the comments of the GC that *clothing accessories* includes goods such as bags and handbags, as defined within the opponent’s specification. As I find the opponent’s goods to be incorporated by this terminology, for the reasons set out in paragraphs 41 - 44 of this decision I find a medium degree of similarity between the opponent’s goods and the applicant’s services relating to clothing accessories.

84. I do not find the remaining goods to which the above retail services relate, namely clothing, footwear and headgear, to be covered by the opponent’s specification. However, this does not mean these services must automatically be found dissimilar to the opponent’s goods⁷. I find there is likely to be shared trade channels in respect of these services and the opponent’s class 18 goods, particularly with bags and handbags.

⁷ In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. sitting as the appointed person concluded on the basis of the European courts’ judgments in *Sanco SA v OHIM* (Case C-411/13P), and *Assembled Investments (Proprietary) Ltd v. OHIM* (Case T-105/05, at paragraphs [30] to [35] of the judgment), upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* (Case C-398/07P), that goods did not need to be the exact subject of the other party’s retail services for similarity to be found.

85. I refer again to *Gitana SA v OHIM*, Case T-569/11 Page 34 of 61, and the below comments of the GC:

- a. “It follows that some consumers may perceive a close connection between clothing, footwear and headgear in Class 25 and certain ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 which are clothing accessories. Consequently, clothing, shoes and headgear in Class 25 bear more than a slight degree of similarity to a category of ‘goods made of these materials [leather and imitations of leather] and not included in other classes’ in Class 18 consisting of clothing accessories made of those materials (see, to that effect, *PiraÑAM diseño original Juan Bolaños*, paragraph 42 above, paragraphs 49 to 51; *exē*, paragraph 42 above, paragraph 32; and *GIORDANO*, paragraph 42 above, paragraphs 25 to 27).”

86. As previously mentioned, Mr Geoffrey Hobbs Q.C. as the Appointed Person in *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, stated the position in respect of goods and services is considerably more complex. I must therefore be careful not to directly apply the GC’s reasoning above in respect of the relationship between class 18 and class 25 goods to the comparison of goods and retail services in this instance. Were this to be a comparison of the goods only, I would find a medium degree of similarity with the opponent’s goods, bags and handbags. Instead, in this instance I must envisage the retail services normally associated with the opponent’s goods, namely bags and handbags, and then compare the opponent’s goods to the retail services of the applicant⁸.

⁸ In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. sitting as the appointed person concluded on the basis of the European courts’ judgments in *Sanco SA v OHIM* (Case C-411/13P), and *Assembled Investments (Proprietary) Ltd v. OHIM* (Case T-105/05, at paragraphs [30] to [35] of the judgment), upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* (Case C-398/07P), 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.

87. I find it is not uncommon for an undertaking offering retail services for clothing, footwear or headgear to sell items such as handbags, or vice versa. Indeed, I find instead it would be more uncommon for a retailer of clothing, footwear or headgear not to also offer for sale bags and/or handbags as a matter of course, particularly, in my experience, in the case of female fashion. The type of bags offered alongside these goods will vary with the type of clothing, footwear or headgear offered, often brought together by retailers specifically to assist consumers with coordinating a particular look. I believe headgear is more likely to be offered within the shops selling a combination of clothing and/or footwear and handbags as previously mentioned, than within separate stores. However, as and when these items are sold within more specific shops, I believe again it is likely handbags would also be offered for sale within these, with retailers intending for these items to be purchased together and to complement each other. For example, it is often the case that a shop specialising in the sale of hats for events, will also sell bags and footwear alongside these items, as the intention for both the retailer and the consumer is often to coordinate the same. I find the applicant's retail services belong to the same market sector as the opponent's goods.

88. The fact that the opponent's goods are often sold in the same specialist sales outlets offering the applicant's retail services (as opposed to the more general department stores where the consumer will be used to viewing many goods from different undertakings under one roof⁹), and the additional fact that the goods themselves will frequently be sold and purchased together by the consumer with consideration to the aesthetic combination of the consumer's outfit, does in my view lead to a level of complementarity between the goods and services, which is likely to facilitate the perception by the relevant consumer of the close connections between these goods and services, and support the impression that the same undertaking may be responsible for both.

89. For the reasons set out above, I find the applicant's retail services to be similar to the opponent's class 18 goods including *bags and handbags* to a low degree.

⁹ See Case T-8/03 *El Corte Inglés v OHIM – Pucci (EMILIO PUCCI)* [2004] ECR II-4297, paragraph 43.

Retail services in relation to fashion accessories;

90. I find the meaning of fashion accessories to include items such as *handbags*, as included within the opponent's goods.

91. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to fashion accessories* similar to the opponent's goods to a medium degree.

Retail services in relation to jewellery; Retail services relating to jewelry;

Online retail services relating to jewelry;

Retail services in relation to time instruments;

92. As with the goods above, it is often the case that retail services in relation to jewellery or time instruments (namely watches) are offered within the same stores, and by the same undertakings as the opponent's goods, namely bags and handbags. However, I do not believe that the bringing together of jewellery items by the retailer would be done with consideration of the handbags that may also be on sale at more than a very superficial level, and it is my view the consumer would not assume as much.

93. I do not find any similarity between these services and the opponent's goods.

Retail services in relation to furnishings; Retail services relating to home textiles;

94. The opponent covers items including *Fabrics; table linen of textile; bath linen (except clothing); household linen; face towels of textile; curtains of textile material*. I find these goods to fall into the categories of furnishings and/or home textiles covered by the applicant's services.

95. For the reasons given in paragraphs 41 - 44 of this decision, I therefore find the applicant's services *Retail services in relation to furnishings; Retail services relating to home textiles* similar to the opponent's goods to a medium degree.

Retail services in relation to sewing articles; Retail services in relation to threads; Retail services in relation to yarns;

96. The opponent's specification includes the goods *patterns for dress making*. I find these to share the same trade channels and intended user as the applicant's retail services in relation to sewing articles, threads and yarns. I find it would be common for outlets selling these articles to also provide the opponent's patterns for making dresses themselves, and they will often be sold together with sewing articles threads and yarns as part of a kit. I find the goods themselves to be complementary to the goods which are the subject of the applicant's retail services, and whilst I find the retail services to be slightly further removed from the opponent's goods than the goods themselves, I find them to be similar to a low degree.

Retail services in relation to non-alcoholic beverages; Mail order retail services related to non-alcoholic beverages; Retail services via global computer networks related to non-alcoholic beverages; Retail services via catalogues related to non-alcoholic drinks;

97. The opponent's registration covers a number of non- alcoholic beverages, including *mineral and aerated waters; beverages based on fruit and fruit juices; lemonades; soda water; mineral and aerated waters; and beverages based on fruit and fruit juices*. I find these goods all fall within the meaning of *non-alcoholic beverages*.

98. For the reasons set out in paragraphs 41 - 44 of this decision, I find the applicant's *Retail services in relation to non-alcoholic beverages; Mail order retail*

services related to non-alcoholic beverages; Retail services via global computer networks related to non-alcoholic beverages; Retail services via catalogues related to non-alcoholic drinks to be similar to the opponent's goods to a medium degree.

Retail services in relation to dairy products;

99. It is clear that retail services in relation to dairy products will include retail services in relation to milk. Whilst I find some similarities with milk and milk drinks themselves and the opponent's beverages, I find that this is too far removed by the time retail services for these items are considered. I find the nature, purpose and method of use differ, and that any complementarity that may be shared (I acknowledge that milk may be an ingredient within some of the opponent's beverages in class 32), will be insufficiently pronounced for a finding of similarity on that basis.

100. I find the applicant's *retail services in relation to dairy products* to be dissimilar to the opponent's goods.

Retail services in relation to preparations for making alcoholic beverages;

101. The opponent's registration includes *alcoholic essences; alcoholic extracts*, which I find to fall within the meaning of preparations for making alcoholic beverages.

102. For the reasons given in paragraphs 41 - 44 of this decision, I find the applicant's *Retail services in relation to preparations for making alcoholic beverages* to be similar to the opponent's goods to a medium degree.

Retail services via global computer networks related to foodstuffs; Retail services via catalogues related to foodstuffs; Retail services in relation to foodstuffs; Mail order retail services related to foodstuffs;

Retail services connected with the sale of subscription boxes containing food;
Retail services connected with the sale of subscription boxes containing food;

Retail services relating to food; Retail services in relation to cocoa; Retail services in relation to cocoa; Retail services relating to fruit; Retail services in relation to coffee; Retail services in relation to coffee; Retail services in relation to teas;

Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing chocolates;

Retail services relating to delicatessen products;

Retail services in relation to confectionery; Retail services in relation to chocolate; Retail services in relation to chocolate; Retail services in relation to confectionery; Retail services relating to candy;

Retail services in relation to ice creams; Retail services in relation to dairy products; Retail services in relation to frozen yogurts; Retail services in relation to sorbets; Retail services in relation to desserts; Retail services in relation to desserts;

Retail services in relation to bakery products; Retail services in relation to baked goods; Retail services in relation to baked goods; Retail services in relation to bakery products

Retail services in relation to seafood; Retail services in relation to meats;

103. The opponent's protection under its earlier mark includes many services relating to the *provision of food and drink and food and drink catering* in class 43.

Although both the opponent's services and the applicant's services relate to food and drink, I find significant differences. Both the applicant's and the opponent's services are designed to encourage the consumer to purchase food. However, the retail services are designed so that the consumer may conveniently purchase specific items of food, be it prepared or in single ingredient form, to take away and prepare within their own home, using their own cooking facilities where necessary. On the contrary, the opponent's services in class 43 provide not just food items, but also skills and expertise in food preparation and presentation, a dining experience and a waiting service.

104. Further, I find the method of use of the services differ. The retail services involve the consumer visiting an online store or retail establishment, circulating shelves or negotiating online isles, viewing and collating the goods themselves and purchasing these a virtual or physical check out point. Generally, there will be very little, if any interaction with a retail assistant prior to the point of purchase. The goods are paid for prior to consumption, and normally consumed at a later time or date. On the contrary, the services relating to the provision of food and drink in class 43 generally involve interaction with waiting staff or other service providers from the outset and throughout the experience, with the food and service being bought to the consumer, who remains fairly stationary throughout the experience. The consumer will order from a defined, prepared menu, and the dishes will be cooked whilst the consumer waits and the items often consumed prior to payment being exchanged, although all of these factors may vary slightly depending on the service type of the establishment.

105. I do not find the services to be complementary, in the sense that the services and not indispensable or important to one another (it is my view that anyone engaging with the provision of food services in class 43 would use wholesale services rather than retail services for the purchasing ingredients), and I find any level of competition very superficial, as it is unlikely that a consumer looking for the opponent's class 43 services may be persuaded that the retail services in class 35 are a comparable alternative.

106. I find little overlap in trade channels here, although I acknowledge it may be the case that supermarkets offering the applicant's services may also have an onsite café in one part of the building.

107. Further, I note the possibility of an overlap of trade channels in respect of these goods and the opponent's non-alcoholic, and indeed alcoholic beverages. However, I find any complementarity to be superficial and insufficiently pronounced for a finding of similarity.

108. I find the applicant's services above to be dissimilar to the opponent's services in class 43 and classes 32 & 33.

Retail services in relation to physical therapy equipment;

Retail services in relation to medical apparatus; Retail services in relation to medical instruments;

Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies

109. The opponent's specification includes *alternative medicine services* in class 44. Whilst I have considered it, I find it unlikely that the retail of medical apparatus, medical instruments or physical therapy equipment, would share trade channels with the opponent's services, and although there is complementarity in the sense that this equipment and thus these retail services may be important for the opponent's services, I find this to be insufficiently pronounced for the consumer to believe the services derive from the same economic undertaking. Furthermore, due to the nature of the alternative medicine services, I find it unlikely that retail of pharmaceutical, veterinary and sanitary preparations and medical supplies would be distributed via these channels, as they are generally contrary to these

practices. With the exception of sanitary preparations, I find it unlikely they will be used in the same.

110. I find the applicant's services *Retail services in relation to physical therapy equipment; Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies* to be dissimilar to those protected by the opponent.

111. Where the applicant's services are clearly dissimilar to the goods and services of the opponent, I find it is unnecessary for a full comparison to be conducted. The opponent has not provided reasoning for the similarity of its goods with the applicant's services and so I have no submissions to consider in respect of this point. I find the applicant's remaining services dissimilar to the opponent's goods and services.

112. As some similarity between the goods and services is essential for success under Section 5(2)(b)¹⁰, I find the opposition fails in respect of the services for which no similarity has been found. No further consideration will be given to the same throughout this decision.

Comparison of marks

113. Within its counterstatement, the applicant states "it is admitted that the applicant's trade mark and the existing mark referred to in the opponent's Form TM7 (although the existing mark is not owned by the opponent) are similar, except for the additional element "Sir" in the applicant's mark".

¹⁰ *Waterford Wedgwood plc v OHIM – C-398/07 P* (CJEU)

114. The applicant goes on to submit that Gordon Bennett is a common expression and that there are many trade marks registered in the UK for this mark (a comment that I will address later on in this decision). Further, the applicant states “The applicant has sought to distinguish its name from the commonplace utterance by styling the name as “Sir Gordon Bennett”. “Sir” is of course an honorific title which, by its nature, has the effect of distinguishing the name it precedes from a name which is not preceded by the title.” The applicant further states this would have the effect of clearly distinguishing the applicant’s mark from the opponent’s in the mind of the consumer with a higher than average level of attention (the level of consumer attention will also be addressed later in this decision).

115. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

- a. “.....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.”

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

117. The respective trade marks are shown below:

GORDON BENNETT	Sir Gordon Bennett
Earlier trade mark	Contested trade mark

118. The earlier mark consists of the two words, GORDON BENNETT. As the applicant points out, GORDON BENNETT is both a name, and an expression in the UK. The expression GORDON BENNETT is used to express shock or surprise. It is my view that the majority of the relevant consumers in the UK would view this mark as both a male name and an expression, but that it would be the expression that is brought to mind most prominently. I do not find either element of the earlier mark to be descriptive of the goods and services registered by the opponent, and I find both GORDON and BENNETT to be equally dominant and distinctive within the opponent’s mark. The overall impression of the earlier mark resides in its entirety.

119. The applicant’s mark consists of three words, namely SIR GORDON BENNETT. The applicant states that SIR has been included to distinguish the mark from “commonplace utterance” as it is an “honorific” title. However, on the contrary, I find the use of the male prefix “SIR” to be the least distinctive and dominant element of the applicant’s mark. As a generic prefix used before the name of all males in the UK that have achieved a knighthood, it carries less weight in the overall impression of the mark than the other elements comprising a full name. However, I find the inclusion of “SIR” cannot be completely disregarded within the overall impression of the mark. Furthermore, despite SIR featuring at the beginning of the mark, which in some instances may help to draw the consumers attention to this element, I find in this instance it is less dominant than its two counterparts GORDON BENNETT.

Visual comparison

120. Visually, the marks share two words and thirteen letters in the same order. The opponent's mark is included visually in its entirety in the applicant's mark. As the applicant has pointed out, the only difference between the marks is the three letter word "SIR". It is well established that the case within which a word mark is filed is not relevant, due to the allowance for fair and notional use of the same. I find the marks visually similar to a high degree.

Aural comparison

121. Aurally, the marks share 4 out of 5 syllables, and the opponent's mark is included in its entirety within the applicant's mark. I find the single syllable "SIR" at the beginning of the applicant's mark makes very little difference to the sound of the same. I find the marks aurally similar to a high degree.

Conceptual comparison

122. The applicant has submitted that conceptually, the opponent's mark will bring to mind the expression *Gordon Bennett*, used in the UK to express shock or surprise. I agree with this. I find it unlikely that for the majority of the relevant consumer the mark GORDON BENNETT will bring to mind the individual Gordon Bennett (upon whom the expression is based), or the history surrounding the man himself, although I accept this may be the case for a portion of the relevant consumer with a particular interest or knowledge in this area.

123. Despite the inclusion of "SIR" within the applicant's mark, I find conceptually the applicant's mark will still, for the majority of consumers, bring to mind the expression Gordon Bennett. I find the addition of SIR will do little to change the meaning of the mark in the mind of the consumer, although it may be viewed as a playful way of emphasising the feeling of surprise. Again, it is my view that even

with the addition of “SIR”, it is unlikely the history surrounding Gordon Bennett, or the man himself will be bought to mind.

124. It is possible that for some, the inclusion of the element Sir may be viewed by the consumer as alluding to a sense of honour and thus quality of the services offered. However, despite this, I find the marks conceptually near identical, or at the very least similar to a high degree.

Average consumer and the purchasing act

125. The applicant makes several statements in its counterstatement with regards to the relevant consumer and the degree of attention paid by the same. The applicant references its own particular retail services, stating it sells high quality, British made investment pieces and thoughtful gifts. The applicant states its retail services offer goods at a higher than average price point, and that the goods are not aimed at the general public looking to purchase frequently or cheaply. They state that for this reason, the relevant public will consist of the average consumer with a higher than average level of attention.

126. It is clear from the applicant’s comments that it has misconstrued how the relevant consumer and the level of attention paid is to be established within opposition proceedings, in relation to UK trade mark law and practices.

127. The applicant has correctly observed that 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.

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

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

129. However, the cost of the particular products or services offered by the parties are not relevant for determining the relevant consumer and the level of attention paid. In *Bang & Olufsen A/S v OHIM*, Case T-460/05, the GC stated that:

- a. “According to the case-law, the price of the product concerned is also immaterial as regards the definition of the relevant public, since price will also not be the subject of the registration (Joined Cases T-324/01 and T-110/02 *Axions and Belce v OHIM* (Brown cigar shape and gold ingot shape) [2003] ECR II-1897, paragraph 36).”

130. The relevant consumer and level of attention paid must therefore be assessed in respect of the category of goods or services for which protection has been sought, not the nuances of the price points and marketing conditions as dictated by the applicant themselves.

131. In respect of the majority of the applicant’s services, and the opponent’s goods to which they have been found similar, I find that the relevant consumer will in the most part be the general public at large. The services offered will likely be engaged with fairly frequently, and I find that at most the general public as the relevant consumer will pay no more than an average degree of attention in respect of the majority of the applicant’s services and the opponent’s similar goods. I find that the visual consideration will be of most importance as the services will be engaged with following visual inspection, but I cannot discount aural recommendations. There may be some instances where the services are

used by the professional public, when purchasing items on behalf of employees or clients, and in these cases the level of attention paid may be slightly above average.

132. Furthermore, I find the consumer may pay a low degree of attention when it comes to some of the goods covered by the opponent, and the applicant's retail services thereof. A low degree of attention will be paid in respect of goods and retail services thereof in relation to items such as the disposable paper products. I find these items will be purchased primarily based on the visual inspection. For procedural efficiency, I will identify each of the items for which the consumer will pay below average and average degree of attention individually within my assessment of likelihood of confusion only if it becomes necessary to do so.

133. In respect of the services relating to alcoholic beverages, I note the average consumer will consist of the general public over the age of 18. When purchasing alcohol, the relevant consumer will consider the type, flavour, and alcohol percentage within the same, according to their preference. I find in respect of all goods and services relating to alcoholic beverages that again, an average degree of attention will be paid by the relevant consumer. Again, I find these goods will be purchased primarily on visual inspection, but I cannot discount the aural comparison completely due to the possibility of over the counter requests as well as verbal recommendations.

134. Distinctive character of the earlier trade mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those

goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

136. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

137. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

138. Within its counterstatement, the applicant has mentioned that there are various existing registrations in the UK for GORDON BENNETT, including in classes 3, 32 & 33. The applicant has not filed any evidence showing the registrations to which it refers and has not commented or filed any evidence with regards to the use of these marks in the market. This comment made by the applicant is therefore of no relevance to the distinctiveness of the trade mark in this particular case, should this indeed have been applicant’s intended position. Even if the applicant had filed evidence showing the state of the register to which it refers, this alone would not be insufficient to show a weakening of the marks distinctive character through its frequent use in respect of particular goods or services.¹¹

139. The applicant states that GORDON BENNETT is a common expression which is particularly prevalent in the UK. I agree with the applicant that GORDON BENNETT is an expression used in the UK. However, I do not find it to be descriptive or allusive of any characteristic of the opponent’s goods, nor do I find the mark to be laudatory or promotional. It is my view that GORDON BENNETT maintains its ability to designate the origin of the opponent’s goods and services, in addition to being an English expression. I find for all the opponent’s goods that the mark holds a medium degree of inherent distinctiveness.

140. The opponent has not filed any evidence of the use made of the mark GORDON BENNETT, and so I cannot find the distinctive character of the mark has been enhanced through use.

¹¹ See paragraph 73 of the GC’s decision in *Zero Industry Srl v OHIM*, Case T-400/06

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion.

141. Prior to reaching a decision on this matter, I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 24 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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. I must consider the level of attention paid by the consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that a likelihood of confusion may be increased where the earlier mark holds a high degree of distinctive character, either inherently, or due to the use made of the same, and that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks. I must also consider that both the degree of attention paid by the consumer and how the goods or services are obtained will have a bearing on how likely the consumer is to be confused.

142. I consider at this point that there are two types of confusion that I may find. The first type of confusion is direct confusion. Direct confusion occurs where the consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings¹².

143. Where no similarity has been found between the goods and services, it follows that there will be no likelihood of confusion under Section 5(2)(b).

144. Where some similarity has been found between the goods and services, I will continue with my assessment of likelihood of confusion considering all of the

¹² *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10,

factors previously outlined. I found the dominant and distinctive element of the opponent's mark to be GORDON BENNETT, and I found this to be repeated in full within the applicant's mark, with Sir also featuring as an additional element in the latter. I found that the element Sir cannot be completely disregarded within the overall impression of the later mark, but that it was less dominant and distinctive than the conflicting element GORDON BENNETT. I found the marks visually and aurally similar to a high degree, and conceptually at least similar to a high degree, if not identical. I found the earlier mark to hold a medium level of inherent distinctiveness. No evidence was filed attesting to how opponent's mark has been used, and as such I did not find that the distinctiveness of the opponent's mark has been enhanced through use.

145. In respect of all the services that share similarity with the opponent's goods, I found that at least significant portion of the relevant consumer would be members of the general public. I found that the relevant consumer would pay either an average or below average level of attention when purchasing the goods.

146. I further consider that the element SIR in the applicant's mark is the only element that differentiates the applicant's mark it from the earlier mark. As previously mentioned, the prefix SIR is the least dominant and distinctive element of the mark, and it is given to all males receiving a knighthood in the UK. Further, it is my experience that this is often used intermittently by those holding the title, with individuals often only using this element only in a formal setting, dropping its use in everyday life. It is the elements that follow SIR (the person's name) that will be used to identify one individual from another, and that will stick in the consumers mind. In this case, I believe in the same way it will also be the name that the consumer use primarily to identify the commercial origin of the goods, rather than the element SIR. Bearing in mind the consumer's imperfect recollection, I believe SIR will likely be often forgotten or omitted when recalling the applicant's mark.

147. It is my view that in this instance that the high level of similarity the marks, and the entire repetition of the opponent's mark within the applicant's will result in a likelihood of direct confusion between the marks, even in instances where the consumer is paying a medium (or higher) degree of attention. I believe the high similarity between the marks will offset the differences in the goods and services to the point that, even where the goods and services are similar only to a low degree, there will be a likelihood of direct confusion in respect of the same.

148. However, if I am wrong in finding direct confusion, I find that even if the differences are noticed, there will be a likelihood of indirect confusion. Upon noticing the differences of "SIR" in this instance, the shared common elements in the mark will lead the consumer to believe that all of the goods and services derive from the same economic undertaking, with the use of SIR making reference to a brand extension or sub-brand owned by the applicant.

Final Remarks

149. Both the opponent and the applicant have achieved partial success in this opposition. I find the application may proceed to registration in respect of the following services:

Class 35: Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -); Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing food; Retail services for computer software; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services in relation to agricultural equipment; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to bedding for animals; Retail services in relation to bicycle accessories; Retail services in relation to

building materials; Retail services in relation to car accessories; Retail services in relation to chemicals for use in agriculture; Retail services in relation to chemicals for use in forestry; Retail services in relation to chemicals for use in horticulture; Retail services in relation to chocolate; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to computer software; Retail services in relation to confectionery; Retail services in relation to construction equipment; Retail services in relation to cooling equipment; Retail services in relation to dairy products; Retail services in relation to desserts; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -); Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing food; Retail services in relation to agricultural equipment; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to bedding for animals; Retail services in relation to bicycle accessories; Retail services in relation to building materials; Retail services in relation to car accessories; Retail services in relation to chocolate; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to confectionery; Retail services in relation to construction equipment; Retail services in relation to cooling equipment; Retail services in relation to dairy products; Retail services in relation to desserts; Retail services in relation to dietary supplements; Retail services in relation to diving equipment; Retail services in relation to domestic electrical equipment; Retail services in relation to domestic electronic equipment; Retail services in relation to downloadable music files; Retail services in relation to earthmoving equipment; Retail services in relation to festive decorations; Retail services in relation to floor coverings; Retail services in relation to fodder for animals; Retail services in relation to foodstuffs; Retail services in relation to freezing equipment; Retail services in relation to frozen yogurts; Retail services in relation to fuels; Retail

services in relation to furniture; Retail services in relation to games; Retail services in relation to hand-operated implements for construction; Retail services in relation to hand-operated tools for construction; Retail services in relation to hearing protection devices; Retail services in relation to heaters; Retail services in relation to heating equipment; Retail services in relation to ice creams; Retail services in relation to information technology equipment; Retail services in relation to jewellery; Retail services in relation to kitchen appliances; Retail services in relation to lighting; Retail services in relation to litter for animals; Retail services in relation to lubricants; Retail services in relation to meats; Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Retail services in relation to metal hardware; Retail services in relation to mobile phones; Retail services in relation to musical instruments; Retail services in relation to navigation devices; Retail services in relation to physical therapy equipment; Retail services in relation to preparations for making alcoholic beverages; Retail services in relation to pushchairs; Retail services in relation to refrigerating equipment; Retail services in relation to safes; Retail services in relation to sanitary installations; Retail services in relation to sanitation equipment; Retail services in relation to seafood; Retail services in relation to sex aids; Retail services in relation to smartphones; Retail services in relation to smartwatches; Retail services in relation to sorbets; Retail services in relation to sporting articles; Retail services in relation to sporting equipment; Retail services in relation to sun tanning appliances; Retail services in relation to teas; Retail services in relation to time instruments; Retail services in relation to tobacco; Retail services in relation to toys; Retail services in relation to vehicles; Retail services in relation to veterinary apparatus; Retail services in relation to veterinary articles; Retail services in relation to veterinary instruments; Retail services in relation to veterinary preparations; Retail services in relation to wall coverings; Retail services in relation to water supply equipment; Retail services in relation to weapons; Retail services in relation to wearable computers; Retail services relating to audiovisual equipment; Retail services relating to automobile accessories; Retail services relating to automobile parts; Retail services relating to candy; Retail services relating to delicatessen products; Retail services relating to food; Retail

services relating to fruit; Retail services relating to furniture; Retail services relating to jewelry; Retail services relating to live animals; Retail services relating to sporting goods; Retail services via catalogues related to foodstuffs; Retail services via global computer networks related to foodstuffs; Retail shop window display arrangement services; Mail order retail services related to foodstuffs; Online retail services relating to jewelry; Online retail services relating to toys.

150. The opposition has been successful in respect of all remaining goods.

151. I note the applicant made the following requests at the end of its counterstatement:

- a. “Alternatively, if the opposition is not rejected for the reasons set out above, the applicant requests by the applicant that the opposition is rejected and matters are instead dealt with by appropriate amendments to the applicant’s mark. The applicant has indicated in pre-action correspondence that it would be willing to resolve matters by way of appropriate limitations or disclaimers in its application and the applicant considers that a limitation or disclaimer would be sufficient to remove any likelihood of confusion if there is any”.

152. I see this as a request by the applicant to make appropriate amendments to the applicant’s specification under Tribunal Practice Notice (1/2011), to the extent that a likelihood of confusion with the opponent’s mark may no longer be found. However, this is not (as it seems may be suggested by the applicant) an alternative way of dealing with the matter to the extent that opposition may be rejected entirely, and instead, appropriate limitations made. I am not privy to any pre-action correspondence between the parties, the contents of which is likely to be without prejudice and not something by which either party will be bound. Guidance on the correct approach to take in these instances is outlined in the aforementioned TPN (1/2011) as below:

3.2.2 Defended Proceedings

In a case where amendment to the specification(s) of goods and/or services is required as the result of the outcome of contested proceedings the Hearing Officer will, where appropriate, adopt one or combination of the following approaches:

- (a) Where the proceedings should only succeed in part, or where the proceedings are directed against only some of the goods/services covered by the trade mark and the result can be easily reflected through the simple deletion of the offending descriptions of goods/services, the Hearing Officer will take a "blue pencil" approach to remove the offending descriptions of goods/services. This will not require the filing of a Form TM21 on the part of the owner. If, however, any rewording of the specification is proposed by the owner in order to overcome the objection, then the decision of the Hearing Officer will take that rewording into account and the proposed wording being sanctioned by the Registrar as acceptable from a classification perspective;

- (b) Where the result cannot be easily reflected through simple deletion, but the Hearing Officer can clearly reflect the result by adding a "save for" type exclusion to the existing descriptions of goods/services, he or she will do so. This will not require the filing of a Form TM21 on the part of the owner. If, however, any rewording of the specification is proposed by the owner in order to overcome the objection, then the decision of the Hearing Officer will take that rewording into account subject to it being sanctioned by the Registrar as acceptable from a classification perspective;

(c) If the Hearing Officer considers that the proceedings are successful against only some of the goods/services, but the result of the proceedings cannot be clearly reflected in the application through the simple deletion of particular descriptions of goods/services, or by adding a "save for" type exclusion, then the Hearing Officer will indicate the extent to which the proceedings succeed in his/her own words. The parties will then be invited to provide submissions/proposals as to the appropriate wording for a list of goods/services that reflects his/her findings and after considering the parties' submissions, the Hearing Officer will determine a revised list of goods/services. Subject to appeal, the trade mark will be, or remain, registered for this list of goods/services.

153. By letter dated 20 April 2020, the applicant was provided with an opportunity to provide a fallback specification for my consideration, which was not provided. It is my view in the circumstances, that the 'blue pencil' approach that I have taken is appropriate in this instance, and the application may proceed to registration for the services outlined at paragraph 149 above.

COSTS

Both parties have enjoyed partial success in this opposition, the extent of which is weighted in the applicant's favour. I find it is reasonable to provide the applicant with 60% of the total cost award, with a 40% reduction to account for the opponent's partial success. The cost award is as follows:

Considering the statement of grounds and preparing the counterstatement	£250
40% reduction of costs	-£100

Total

£150

I therefore order INTERLUDE INTERNATIONAL GROUP to pay Sir Gordon Bennett Ltd the sum of £150. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of September 2020

**Rosie Le Breton
For the Registrar**

Annex A

Class 35: Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -);Retail services connected with stationery; Retail services connected with the sale of clothing and clothing accessories; Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing beers; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with the sale of subscription boxes containing food; Retail services for computer software; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for works of art provided by art galleries; Retail services in relation to agricultural equipment; Retail services in relation to alcoholic beverages (except beer);Retail services in relation to animal grooming preparations; Retail services in relation to art materials; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to bags; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to beauty implements for animals; Retail services in relation to beauty implements for humans; Retail services in relation to bedding for animals; Retail services in relation to beer; Retail services in relation to bicycle accessories; Retail services in relation to building materials; Retail services in relation to car accessories; Retail services in relation to chemicals for use in agriculture; Retail services in relation to chemicals for use in forestry; Retail services in relation to chemicals for use in horticulture; Retail services in relation to chocolate; Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations; Retail services in relation to clothing; Retail services in relation to clothing accessories; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to computer software; Retail services in relation to confectionery; Retail services in relation to construction equipment; Retail services in relation to cookware; Retail services in relation to cooling equipment; Retail services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail

services in relation to cutlery; Retail services in relation to dairy products; Retail services in relation to desserts; Retail store services in the field of clothing; Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail purposes (Presentation of goods on communication media, for -);Retail services connected with stationery; Retail services connected with the sale of clothing and clothing accessories; Retail services connected with the sale of furniture; Retail services connected with the sale of subscription boxes containing beers; Retail services connected with the sale of subscription boxes containing chocolates; Retail services connected with the sale of subscription boxes containing cosmetics; Retail services connected with the sale of subscription boxes containing food; Retail services for works of art provided by art galleries; Retail services in relation to agricultural equipment; Retail services in relation to alcoholic beverages (except beer);Retail services in relation to animal grooming preparations; Retail services in relation to art materials; Retail services in relation to articles for use with tobacco; Retail services in relation to audio-visual equipment; Retail services in relation to bags; Retail services in relation to baked goods; Retail services in relation to bakery products; Retail services in relation to beauty implements for animals; Retail services in relation to beauty implements for humans; Retail services in relation to bedding for animals; Retail services in relation to beer; Retail services in relation to bicycle accessories; Retail services in relation to building materials; Retail services in relation to car accessories; Retail services in relation to chocolate; Retail services in relation to cleaning articles; Retail services in relation to cleaning preparations; Retail services in relation to clothing; Retail services in relation to clothing accessories; Retail services in relation to cocoa; Retail services in relation to coffee; Retail services in relation to computer hardware; Retail services in relation to confectionery; Retail services in relation to construction equipment; Retail services in relation to cookware; Retail services in relation to cooling equipment; Retail services in relation to cups and drinking glasses; Retail services in relation to cups and glasses; Retail services in relation to cutlery; Retail services in relation to dairy products; Retail services in relation to desserts; Retail services in relation to dietary supplements; Retail services in relation to disposable paper products; Retail services in relation to diving equipment; Retail services in relation to domestic electrical equipment; Retail services in relation to domestic electronic equipment; Retail services in relation to downloadable electronic publications; Retail services in

relation to downloadable music files; Retail services in relation to earthmoving equipment; Retail services in relation to educational supplies; Retail services in relation to fabrics; Retail services in relation to fashion accessories; Retail services in relation to festive decorations; Retail services in relation to floor coverings; Retail services in relation to fodder for animals; Retail services in relation to food cooking equipment; Retail services in relation to food preparation implements; Retail services in relation to foodstuffs; Retail services in relation to footwear; Retail services in relation to fragrancings preparations; Retail services in relation to freezing equipment; Retail services in relation to frozen yogurts; Retail services in relation to fuels; Retail services in relation to furnishings; Retail services in relation to furniture; Retail services in relation to games; Retail services in relation to gardening articles; Retail services in relation to gardening products; Retail services in relation to hair products; Retail services in relation to hand-operated implements for construction; Retail services in relation to hand-operated tools for construction; Retail services in relation to headgear; Retail services in relation to hearing protection devices; Retail services in relation to heaters; Retail services in relation to heating equipment; Retail services in relation to horticulture equipment; Retail services in relation to horticulture products; Retail services in relation to hygienic implements for animals; Retail services in relation to hygienic implements for humans; Retail services in relation to ice creams; Retail services in relation to information technology equipment; Retail services in relation to jewellery; Retail services in relation to kitchen appliances; Retail services in relation to kitchen knives; Retail services in relation to lighting; Retail services in relation to litter for animals; Retail services in relation to lubricants; Retail services in relation to luggage; Retail services in relation to meats; Retail services in relation to medical apparatus; Retail services in relation to medical instruments; Retail services in relation to metal hardware; Retail services in relation to mobile phones; Retail services in relation to musical instruments; Retail services in relation to navigation devices; Retail services in relation to non-alcoholic beverages; Retail services in relation to paints; Retail services in relation to pet products; Retail services in relation to physical therapy equipment; Retail services in relation to preparations for making alcoholic beverages; Retail services in relation to preparations for making beverages; Retail services in relation to printed matter; Retail services in relation to pushchairs; Retail services in relation to recorded content; Retail services in relation to refrigerating equipment; Retail services in

relation to saddlery; Retail services in relation to safes; Retail services in relation to sanitary installations; Retail services in relation to sanitation equipment; Retail services in relation to seafood; Retail services in relation to sewing articles; Retail services in relation to sex aids; Retail services in relation to smartphones; Retail services in relation to smartwatches; Retail services in relation to sorbets; Retail services in relation to sporting articles; Retail services in relation to sporting equipment; Retail services in relation to stationery supplies; Retail services in relation to sun tanning appliances; Retail services in relation to tableware; Retail services in relation to teas; Retail services in relation to threads; Retail services in relation to time instruments; Retail services in relation to tobacco; Retail services in relation to toiletries; Retail services in relation to toys; Retail services in relation to umbrellas; Retail services in relation to vehicles; Retail services in relation to veterinary apparatus; Retail services in relation to veterinary articles; Retail services in relation to veterinary instruments; Retail services in relation to veterinary preparations; Retail services in relation to wall coverings; Retail services in relation to water supply equipment; Retail services in relation to weapons; Retail services in relation to wearable computers; Retail services in relation to works of art; Retail services in relation to yarns; Retail services relating to alcoholic beverages; Retail services relating to audiovisual equipment; Retail services relating to automobile accessories; Retail services relating to automobile parts; Retail services relating to candy; Retail services relating to clothing; Retail services relating to delicatessen products; Retail services relating to fake furs; Retail services relating to flowers; Retail services relating to food; Retail services relating to food preparation implements; Retail services relating to fragrancing preparations; Retail services relating to fruit; Retail services relating to furniture; Retail services relating to furs; Retail services relating to home textiles; Retail services relating to horticultural equipment; Retail services relating to horticultural products; Retail services relating to jewelry; Retail services relating to kitchen knives; Retail services relating to live animals; Retail services relating to sporting goods; Retail services via catalogues related to alcoholic beverages (except beer); Retail services via catalogues related to beer; Retail services via catalogues related to foodstuffs; Retail services via catalogues related to non-alcoholic drinks; Retail services via global computer networks related to alcoholic beverages (except beer); Retail services via global computer networks related to beer; Retail services via global computer networks

related to foodstuffs; Retail services via global computer networks related to non-alcoholic beverages; Retail shop window display arrangement services; Retail store services in the field of clothing; Mail order retail services connected with clothing accessories; Mail order retail services for clothing; Mail order retail services for clothing accessories; Mail order retail services for cosmetics; Mail order retail services related to alcoholic beverages (except beer); Mail order retail services related to beer; Mail order retail services related to foodstuffs; Mail order retail services related to non-alcoholic beverages; Online retail services relating to clothing; Online retail services relating to cosmetics; Online retail services relating to handbags; Online retail services relating to jewelry; Online retail services relating to luggage; Online retail services relating to toys; Online retail store services in relation to clothing; Online retail store services relating to clothing; Online retail store services relating to cosmetic and beauty products.

Annex B

Class 3: Soaps; essential oils; cosmetics, hair lotions, deodorants for personal use (perfumery), dentifrices; perfumery products; perfumes; room fragrances, air freshening products; perfumed substances for indoor perfume dispensers; scented water, toilet water, flower extracts, bases for flower perfumes; scented wood; pot-pourri and perfumed incense; perfumed paper, products for perfuming linen; perfumed sachets; bleaching preparations and other substances for laundry use, laundry preparations; cleaning, polishing, degreasing and abrasive preparations.

Class 16: Printing products (printed matter); bookbinding material; photographs; stationery; adhesives (glues) for stationery or household purposes; artists' materials; paintbrushes; typewriters and office requisites (except furniture); instructional or teaching material (except apparatus); printing type; printing blocks; paper; cardboard; boxes of cardboard or paper; posters; albums; cards; books; newspapers; prospectuses; pamphlets; calendars; writing instruments; engravings or lithographic works of art; paintings (pictures), framed or unframed; aquarelles; patterns for dressmaking; drawings, drawing instruments; handkerchiefs of paper; face towels of paper; table linen of paper; toilet paper; bags and small bags (envelopes, pouches) of paper or plastic for packaging; garbage bags of paper or of plastics.

Class 18: Leather and imitation leather; animal skins; leather articles, namely traveling bags, beach bags, handbags, rucksacks, satchels, card cases, wallets, purses not of precious metal, school bags, briefcases, trunks, suitcases, traveling trunks, umbrellas, parasols, walking sticks, whips, harnesses and saddlery.

Class 21: Candlesticks of glass, porcelain, crystal and earthenware; crockery sets and tableware services of precious metal, table plates; tea services and tea services of precious metal; coffee services and coffee services of precious metal; cups, saucers, liqueur services and liqueur services of precious metal; drinking glasses; drinking vessels, bottles, decanters; kitchen utensils and kitchen utensils of precious

metal; dishes; trays for domestic use, soup tureens, vegetable dishes, bowls, butter-dish and cheese plate covers, butter dishes, boxes for sweetmeats, egg cups and egg cups of precious metal, fruit bowls, salt cellars, pepper pots, sugar bowls; corkscrews, bottle openers, rails and rings for napkins; jars, tea boxes, tea infusers, table mats (table utensils); ice buckets; cake molds; ice molds; cruet stands for oil and vinegar; kitchen ladles (basting spoons); bread baskets and boards; pie servers, pipettes (wine-tasting cups), skewers namely metal needles for cooking; knife rests for the table; napkin rings, spatulas and mixing spoons (kitchen utensils), spice sets, table centerpieces; cooking pot sets; toothpicks; and toothpick holders; candle holders, powder compacts, perfume burners, candelabra, namely candlesticks, candle holders, flasks, opaline glass; busts, statuettes and statues made of porcelain, terra cotta or glass; pottery; flower pots and vases; household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes), brush-making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except building glass).

Class 24: Fabrics; table linen of textile; bath linen (except clothing); household linen; face towels of textile; curtains of textile material.

Class 32: Beers; mineral and aerated waters; beverages based on fruit and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars; soda water; non-alcoholic aperitifs; beers; mineral and aerated waters; beverages based on fruit and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars; soda water; non-alcoholic aperitifs; non-alcoholic cocktails.

Class 33: Alcoholic beverages (except beers); wines; alcoholic aperitifs; alcoholic cocktails; digesters (alcohol and liqueurs); alcoholic essences; alcoholic extracts.

Class 43: Hotel services, temporary accommodation, provision of food and drink, bar services; ice cream services; tea rooms; pancake houses; food and drink catering; reservation of hotels and restaurants; provision of catering facilities for meetings, conferences and exhibitions, namely rental of rooms; restaurant services; provision

of catering facilities and hosting at social events and receptions (weddings), namely rental of rooms; banquet halls and reception rooms used for special occasions (terms too vague in the opinion of the international Bureau-rule 13.2.b) of the common regulations).

Class 44: Hygienic and beauty care, thalassotherapy, balneotherapy; beauty salons, hairdressing salons; barber services, manicure and pedicure services; massage salons; alternative medicine services.