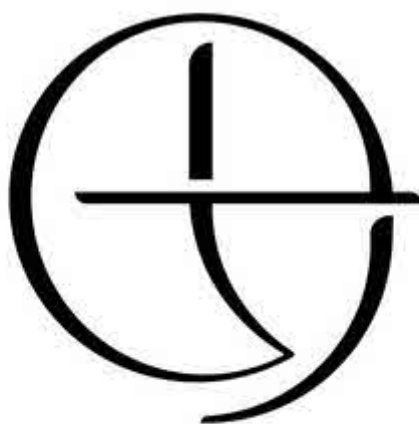


O-588-22

TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO. 3542380
BY ECOLITE WELLBEING (GD) CO., LTD.
TO REGISTER



TIME BEAUTY LAB

AS A TRADE MARK IN CLASSES 3, 5, 8, 10, 21 and 35

AND

OPPOSITION THERETO

UNDER NO. 423343

BY ROGER AOUN

Background and pleadings

1. On 9 October 2020, Ecolite Wellbeing (GD) Co., Ltd. (“the applicant”) applied to register the trade mark shown on the cover page of this decision.
2. The application was published for opposition purposes on 27 November 2020 for the following goods and services:

Class 3 Cosmetic preparations for baths; Beauty masks; Mouthwashes, not for medical purposes; Shining preparations [polish]; Cosmetics for animals; Cosmetics; Cotton wool for cosmetic purposes; Stain removers; Toothpaste; Depilatories; Cakes of toilet soap; Cosmetic kits; Breath freshening sprays; Dental bleaching gels; Air fragrancing preparations; Massage gels other than for medical purposes; Scented water; Make-up removing preparations; Cotton wool impregnated with make-up removing preparations.

Class 5 mothproofing preparations; Bath preparations for medical purposes; Dental lacquer; Depuratives; Gelatine for medical purposes; Sanitary knickers; Sanitary napkins; Pharmaceutical preparations for skin care; Dietetic substances adapted for medical use; Mouthwashes for medical purposes; Nutritional supplements; Disinfectants; Medicated toiletry preparations; Medicated toothpaste; Massage gels for medical purposes.

Class 8 Beard clippers; Hand tools, hand-operated; Razor cases; Hand implements for hair curling; Razor blades; Razors, electric or non-electric; Hair clippers for personal use, electric and non-electric; Depilation appliances, electric and non-electric; Eyelash curlers; Laser hair removal apparatus, other than for medical purposes.

Class 10 Babies' bottles; Orthopaedic articles; Esthetic massage apparatus; Dental apparatus and instruments; Lasers for medical purposes; Massage apparatus; Medical apparatus and instruments; Dental apparatus, electric; Fumigation apparatus for medical purposes; Orthodontic appliances; Therapeutic facial masks; Sanitary masks for medical purposes; LED masks for therapeutic purposes.

Class 21 Brushes; Thermally insulated containers for food; Drinking vessels; Fitted vanity cases; Cleaning instruments, hand-operated; Toilet utensils; Toothbrushes; Toothbrushes, electric; Heads for electric toothbrushes; Water apparatus for cleaning teeth and gums; Floss for dental purposes; Cosmetic utensils; Toothpicks; Oral hygiene devices, namely, toothbrushes and oral irrigators, other than for use in dentistry; Make-up sponges.

Class 35 Marketing; Demonstration of goods; Direct mail advertising; Publication of publicity texts; Advertising; Presentation of goods on communication media, for retail purposes; Import-export agency services; Sales promotion for others; Procurement services for others [purchasing goods and services for other businesses]; Personnel management consultancy; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies.

3. Roger Aoun ("the opponent") filed a notice of opposition on 25 February 2021. The opposition is based upon sections 5(2)(b) and 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") and directed against all the goods and services in the application. For its claims under sections 5(2)(b) and 5(3), the opponent

relies upon all the goods and services covered by the following United Kingdom (“UK”) and European Union (“EU”) trade marks:¹

BEAUTYLAB

UK Registration no. 3444211

Filing date: 14 November 2019

Registration date: 14 August 2020

Mark 2: BEAUTYLAB

UK Registration no. 2253190

Filing date: 17 November 2000

Registration date: 29 June 2001

BEAUTYLAB

UK Registration no. 3574459

Filing date: 4 January 2021²

Registration date: 7 May 2021

BEAUTYLAB

EU registration no. 018065724

Filing date: 16 May 2019

Registration date: 16 October 2019

¹ Although the UK has left the EU and the transition period has now expired, EU trade marks are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019, SI 2019 No. 269, Schedule 5. Further information is provided in Tribunal Practice Notice 2/2020.

² This case was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union and retains the EU filing date of 3 June 2020.

BEAUTYLAB

EU registration no. 018248086

Filing date: 3 June 2020

Registration date: 2 June 2021

Mark 6: BEAUTYLAB

EU Registration no. 015138341

Filing date: 23 February 2016

Registration date: 28 September 2016

4. Given their filing dates, all of the above marks are earlier trade marks in accordance with section 6 of the Act. The applicant has put the opponent to proof of use of its earlier mark identified as Mark 2 in this decision as that mark has been registered for a period of more than five years at the date of the application of the contested mark.
5. The opponent claims that the goods and services in the application are identical or highly similar to the goods and services covered by the earlier marks and that the marks are highly similar. As a consequence, the opponent claims that there is a likelihood of confusion including a likelihood of association under section 5(2)(b). The goods and services covered by the earlier marks on which the opponent relies are set out in annex at the end of this decision
6. Under section 5(3), the claim is that the use of the contested mark would, without due cause, take unfair advantage of the reputation of the earlier marks because the contested mark would benefit from the earlier marks' power of attraction, reputation and prestige. The opponent also claims that due to the link the consumer establishes between the marks, the ability of the opponent's mark to denote the goods and services emanating from the opponent will be reduced.

7. Under section 5(4)(a), the opponent claims to have goodwill in the sign BEAUTYLAB. The opponent further claims that it first used the sign as early as June 2003 throughout the UK in relation to cosmetics, skincare preparations, haircare preparations, tanning preparations, sunscreen, after sun preparations and substances, creams for skin and body, perfumes, non-medicated toilet preparations, soaps, gels, toiletries, essential oils and essential oil blends, deodorants, antiperspirants, fragrancing preparations for personal use, health and beauty salons, provision of health and beauty treatments. Consequently, the opponent submits that it is entitled to prevent the use of the contested mark under the law of passing off.
8. The applicant filed a counterstatement denying the grounds of opposition.
9. The opponent is represented by Laytons LLP and the applicant is represented by Groom Wilkes and Wright LLP. Only the opponent filed evidence. Both parties filed written submissions and neither party requested a Hearing. I make this decision after a careful reading of all the papers filed by the parties.
10. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

Evidence

11. The opponent's evidence-in-chief comes in the form of the witness statement of Mr Roger Aoun dated 5 July 2021, together with 7 exhibits. Mr Aoun is the opponent in this proceeding and is the sole director and shareholder of BeautyLab limited, a company incorporated in England. The second witness statement of Mr Aoun seeks to address the applicant's criticism of the evidence-in-chief. I will return to Mr Aoun's evidence later in the decision.

Section 5(2)(b)

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

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

(a) -

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

13. Section 5A of the Act states:

“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.”

Case law

14. The following principles are gleaned from the judgments of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V*, Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L.Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles:

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

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

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

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

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

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

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

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

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

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

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

My approach to the claim under section 5(2)(b)

BEAUTYLAB

³ In those circumstances, Mark 2 would not place the opponent in any better position than the other earlier marks. Therefore, an assessment of proof of use is unnecessary in these proceedings. Accordingly, I will proceed based on the earlier marks **BEAUTYLAB** .

Comparison of goods and services

16. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their

³ *Hypen v EUIPO*, EU:T:2016:469, [30] T-146/15

method of use and whether they are in competition with each other or are complementary”.

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

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

18. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court (“GC”) stated that ‘complementary’ means:

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

19. In *Gérard Meric v OHIM*, the General Court held that goods can be considered as identical when the goods designated by the earlier mark are included in a

more general category, designated by the trade mark application - and vice versa.⁴

20. The applicant's goods and services to be compared with the opponent's specifications are given below:

Class 3

Cosmetic preparations for baths; Beauty masks; Mouthwashes, not for medical purposes; Shining preparations [polish]; Cosmetics for animals; Cosmetics; Cotton wool for cosmetic purposes; Stain removers; Toothpaste; Depilatories; Cakes of toilet soap; Cosmetic kits; Breath freshening sprays; Dental bleaching gels; Air fragrancing preparations; Massage gels other than for medical purposes; Scented water; Make-up removing preparations; Cotton wool impregnated with make-up removing preparations.

21. The terms *cosmetics* and *depilatories* are identically contained in both specifications.

22. *Cakes of toilet soap* in the application are identical to soaps in the opponent's specification.

23. According to *Collins English Dictionary*, cosmetics are beauty preparations and make-up.⁵ Therefore, the term cosmetics in the opponent's specification encompasses *cosmetic preparations for baths; beauty masks; and scented water*. The goods are, therefore, identical under the *Merck* principle.

24. *Massage gels other than for medical purposes in the application* are used for deep tissue or other type of massages. Although their purpose is different from cosmetics, their nature, channels of trade and users are likely to coincide. The goods are, however, not complementary nor do they compete. Considering

⁴ case T-133/05

⁵ <https://www.collinsdictionary.com/dictionary/english/cosmetics>, accessed on 6 May 2022.

these factors, I find that the applicant's massage gels are similar to cosmetics to a medium degree.

25. The term cosmetics in the opponent's specification is broad and includes *cosmetics for animals*. The goods are, therefore, identical under the *Meric* principle.

26. *Shining preparations [polish]* in the application are cleaning products that share nature and method of use with cleaning compositions for spot removal in the opponent's specification. Their channels of trade and users would coincide. The goods are not complementary, nor do they compete. Considering these factors, I find that the goods are similar to a medium degree.

27. The nature, purpose and method of use of *cosmetic kits* in the application differs from cosmetics in the opponent's specification. However, the respective goods are likely to share channels of trade and users. As cosmetic kits are used to store or carry cosmetics, the applicant's goods are important for cosmetics and the average consumer is likely to consider that the goods originate from the same undertaking. Considering these factors, I find that the goods are similar to a medium degree.

28. Dentifrices in the opponent's specification are goods used for cleaning teeth. The term, therefore, includes *mouthwashes, not for medical purposes, toothpaste and dental bleaching gels* in the applicant's specification. The conflicting goods are, therefore, identical under the *Meric* principle.

29. *Breath freshening sprays* in the application are commonly used to reduce or prevent bad breath. They differ in their purpose and method of use with dentifrices which usually come in the form of paste or liquid. The goods, however, share channels of trade and users. They are likely to be manufactured by the same undertaking. Considering these factors, I find that the goods are similar to a medium degree.

30. The applicant's *cotton wool for cosmetic purposes; make-up removing preparations; cotton wool impregnated with make-up removing preparations*

are used to remove cosmetics such as mascara or lipstick that are covered by the opponent's specification. The applicant's goods are, therefore, important for the use of the opponent's goods and the average consumer is likely to think that the same undertaking is responsible for both goods. The goods, however, do not compete. Considering all these factors, I find that the applicant's cotton wool, make-up removing preparations and cotton wool are similar to cosmetics covered by the opponent's specification to a degree that is between low and medium.

31. Perfumes in the earlier marks are similar to a high degree to air fragrancing preparations on the basis that the goods are scented products and share their nature, purpose, channels of trade and users.
32. *Stain removers* in the application are identical to soaps under the *Meric* principle as soaps include stain remover soaps.

Class 5

Mothproofing preparations; Bath preparations for medical purposes; Dental lacquer; Depuratives; Gelatine for medical purposes; Sanitary knickers; Sanitary napkins; Pharmaceutical preparations for skin care; Dietetic substances adapted for medical use; Mouthwashes for medical purposes; Nutritional supplements; Disinfectants; Medicated toiletry preparations; Medicated toothpaste; Massage gels for medical purposes.

33. The opponent submits that the applicant's *mothproofing preparation* are chemical substances for removing harmful infestations and are highly similar to the opponent's disinfectant washes [other than soap] and cleaning cloths impregnated with disinfectant for hygiene purposes. I am of the view that the respective goods are similar to a medium degree. As mothproofing preparations are used to keep moths away and disinfectants destroys bacteria, I do not think the goods are in competition nor are they complementary in the sense described by case law. The goods, however, share nature, purpose and method of use. Their channels of trade and users would coincide.

34. The term *bath preparations for medical purposes* in the application is identically contained in the opponent's specification.
35. According to *Collins dictionary*, pharmaceuticals are preparations for treatment or prevention of disease. Pharmaceuticals in the opponent's specification are, therefore, identical to *dental lacquer, depurative, gelatine for medical purposes, pharmaceutical preparations for skin care, dietetic substances adapted for medical use, mouthwashes for medical purposes for medical purposes, medicated toiletry preparations, medicated toothpaste and massage gels for medical purposes* in the application under the *Meric* principle.
36. *Sanitary knickers and sanitary napkins* are hygiene products that share nature and purpose with sanitary preparations for medical use. Their channels of trade and users would overlap. The goods are neither complementary nor do they compete. Considering these factors, I find that sanitary knickers and sanitary napkins in the application are similar to a medium degree to sanitary preparations for medical use in the opponent's specification.
37. *Nutritional supplements* in the application are identical to the opponent's dietetic supplements under the *Meric* principle.
38. *Disinfectants* in the application are identical to the opponent's disinfecting handwash under the *Meric* principle.

Class 8

Beard clippers; Hand tools, hand-operated; Razor cases; Hand implements for hair curling; Razor blades; Razors, electric or non-electric; Hair clippers for personal use, electric and non-electric; Depilation appliances, electric and non-electric; Eyelash curlers; Laser hair removal apparatus, other than for medical purposes.

39. *Beard clippers* in the application are highly similar if not identical to beard trimmer in the opponent's specification as both goods are used to cut/shape

beard. Their method of use and nature are the same. The goods are in competition. Their channels of trade and users coincide.

40. *Hand tools, hand-operated, razors and eyelash curlers* in the application are identically contained in both specifications.
41. *Razor cases and razor blades* in the application are complementary to razors in the opponent's specification. The goods share channels of trade and users. They are, however, not in competition. Considering these factors, I find that the goods are similar to a medium degree.
42. *Hand implements for hair curling and hair clippers for personal use, electric and non-electric* are identical to hair styling appliances in the opponent's specification under the *Meric* principle.
43. *Depilation appliances, electric and non-electric and Laser hair removal apparatus, other than for medical purposes* are identical to the opponent's hair removal implements under the *Meric* principle.

Class 10

Babies' bottles; Orthopaedic articles; Esthetic massage apparatus; Dental apparatus and instruments; Lasers for medical purposes; Massage apparatus; Medical apparatus and instruments; Dental apparatus, electric; Fumigation apparatus for medical purposes; Orthodontic appliances; Therapeutic facial masks; Sanitary masks for medical purposes; LED masks for therapeutic purposes.

44. The opponent argues that *babies' bottles* in the application are similar to an average degree to water therapy apparatus for medical use. I disagree. Water therapy apparatus is an equipment used to perform therapy in water to treat medical conditions. Babies' bottles, on the other hand, are used to feed babies. Their nature, purpose and method of use are different. The goods are not in competition. They are not complementary in the sense described by the case law. Considering these factors, I find that the applicant's babies' bottles are

dissimilar to the opponent's water therapy apparatus for medical use. I also do not think that babies' bottles share any meaningful similarity with the remaining goods and services in the opponent's specification. As a certain degree of similarity between goods and services are necessary to establish a likelihood of confusion, the opposition against these goods fails.⁶

45. *Esthetics massage apparatus and massage apparatus* in the application is identical to apparatus for the therapeutic stimulation of the body in the opponent's specification under the *Merik* principle.
46. *Orthopaedic articles, dental apparatus and instruments, medical apparatus and instruments, dental apparatus, electric, fumigation apparatus for medical purposes, orthodontic appliances* in the application are identical to medical therapy instruments covered by the opponent's specification under the *Merik* principle.
47. *Lasers for medical purposes* in the application is identical to laser apparatus for therapeutic use in the opponent's specification under the *Merik* principle.
48. *Therapeutic facial masks, sanitary masks for medical purpose and LED masks for therapeutic purposes* in the application are identical to medical apparatus and instruments for the care of the skin under the *Merik* principle.

Class 21

Brushes; Thermally insulated containers for food; Drinking vessels; Fitted vanity cases; Cleaning instruments, hand-operated; Toilet utensils; Toothbrushes; Toothbrushes, electric; Heads for electric toothbrushes; Water apparatus for cleaning teeth and gums; Floss for dental purposes; Cosmetic utensils; Toothpicks; Oral hygiene devices, namely, toothbrushes and oral irrigators, other than for use in dentistry; Make-up sponges.

⁶ *Waterford Wedgwood plc v OHIM* – C-398/07 P

49. *Fitted vanity cases, cosmetic utensils, toilet utensils and make-up sponges* are identically contained in both specifications.

50. *Brushes* in the application is identical to cosmetics brushes in the opponent's specification under the *Meric* principle.

51. *Cleaning instruments, hand-operated; toothbrushes, toothbrushes, electric; water apparatus for cleaning teeth and gums; floss for dental purposes; heads for electric toothbrushes; toothpicks; oral hygiene devices, namely, toothbrushes and oral irrigators, other than for use in dentistry* in the application are identical to articles for cleaning purposes in the opponent's specification under the *Meric* principle.

52. The opponent submits that *thermally insulated containers for food and drinking vessels* in the application are similar to an average degree to containers for cosmetics in the opponent's specification. I disagree. While the opponent's container is used to store/carry cosmetics, the applicant's container is used to store food and drinks. Although their broad purpose is the same i.e., to store an item, their nature, specific purpose, and method of use are different. They are likely to be placed on different shelves in different areas in a retail premise, for example. The users are the same, though that is at a very high level of generality. The goods are neither complementary nor do they compete. Considering these factors, I find that the conflicting goods are dissimilar. I also find that the applicant's thermally insulated containers for food and drinking vessels are dissimilar to the remaining goods and services covered by the opponent's specification. The opposition against these goods fails.

Class 35

Marketing; Demonstration of goods; Direct mail advertising; Publication of publicity texts; Advertising; Presentation of goods on communication media, for retail purposes; Import-export agency services; Sales promotion for others; Procurement services for others [purchasing goods and services for other businesses]; Personnel management consultancy; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies;

Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies.

53. *Marketing; demonstration of goods; direct mail advertising; publication of publicity texts, advertising; presentation of goods on communication media, for retail purposes; sales promotion for others* in the application are identical to advertising and promotional services in the opponent's specification because they are either identically contained in both specifications, or identical under the *Meric* principle.

54. The opponent submits that *import-export agency services* in the application are highly similar to the opponent's business management consulting in relation to strategy, marketing, production, personnel and retail sale matters. The basis of the opponent's submission is that the services of import-export services are ancillary to the commercialisation of goods, and so both services are likely to be offered by the same undertaking, target the same customers and can be distributed through the same trade channels. I disagree. The applicant's services are specialised services which concern the import and export of goods. While the opponent's consultancy services are provided to improve business performance. Their nature and purpose are different. The services are not complementary, nor do they compete. Their channels of trade also do not coincide. On that basis, I find that the respective services are dissimilar. The applicant's services are also dissimilar to the remaining goods and services covered by the opponent's specification. The opposition against these goods fails.

55. *Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies* in the application concern retail services related to products that affect health and hygiene. These services are identical to retail services in relation to pharmaceuticals in the opponent's specification because they are either contained identically in both specifications or identical under the *Meric* principle.

56. *Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies* in the application concerns business-to-business service

while retail services concern provision of the goods to the end consumer. The services, therefore, differ in their nature and purpose. There is a likely overlap in the channels of trade where goods are purchased online, for example. The users are also likely to coincide. However, I do not consider that there is a meaningful competitive relationship between the services. The services are not complementary. Considering these factors, I find that the applicant's wholesale services are similar to the applicant's retail services to a medium degree.

57. *Personnel management consultancy* in the application involves management of human resources. These services are therefore, identical to business management consulting with relation to personnel covered by the opponent's specification.

58. Business management consulting with relation to production covers services of providing advice and guidance on production process which is also likely to include providing advice on purchasing goods for production. The opponent's services are, therefore, likely to share channels of trade and users with *procurement services for others [purchasing goods and services for other businesses]* in the application. The nature and purpose of the services differ. The services are not complementary, nor do they compete. Considering these factors, I find the respective services are similar to a low degree.

The average consumer and the nature of the purchasing act

59. It is necessary for me to determine who the average consumer is for the respective parties' goods and services.

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

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is

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

61. The opponent submits that the average consumer for the goods, for example, in Classes 3, 21 and the retail services in Class 35 will be a member of the general public and the business services in Class 35 will be business users. I am of the view that the consumer of the parties’ goods in Classes 5,8, 10 and 21 is a member of the general public as well as professionals such as beauticians, pharmacists or medical practitioners.

62. The goods are most likely to be the subject of self-selection from retail outlets, websites or catalogues. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount an aural element to the purchase, particularly when advice is sought from a sales representative, or a purchase is made further to a word-of-mouth recommendation. When making a purchase, factors such as quality and cost (which will vary according to the item) may be considered. Products such as cotton sticks are relatively cheap. Therefore, the degree of attention paid to the purchase of such goods would be lower than that paid to the selection of cosmetics. I am of the view that the average consumer comprising of the general public will pay a low to medium level of attention when purchasing goods. The professional users are likely to pay a medium to fairly high degree of attention to ensure that they factor into account the cosmetic needs of different clients.

63. The average consumer of the parties’ retail services is likely to be a member of the general public while the remaining services are likely to be used by business users. The services are likely to be chosen from websites and there will be some exposure to catalogues and brochures. The selection will be mainly visual, though I acknowledge that there may be an oral component. The

business users will pay a fairly high degree of attention. The general public is likely to pay a medium degree of attention to retail services.

Distinctiveness of the earlier marks

64. The distinctive character of the earlier marks must be considered. The more distinctive they are inherently or through use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

65. The opponent’s marks consist of the word BeautyLab. As most of the goods covered by the opponent’s specification are likely to aimed at enhancing one’s appearance, the word beauty, in that context is descriptive of the goods.

However, the descriptive nature of the word does not extend to goods such as babies' bottles and sanitary napkins and certain services covered by the earlier mark such as business management consulting. The word Lab would be understood as laboratory. Notwithstanding the descriptive nature of the word beauty, I am of the view that the combination BeautyLab bestows the earlier marks with a degree of distinctive character that is either low or low to medium depending on the descriptive connotation of the word Beauty in relation to certain goods and services.

66. The opponent has provided evidence of use which can be summarised as follows:

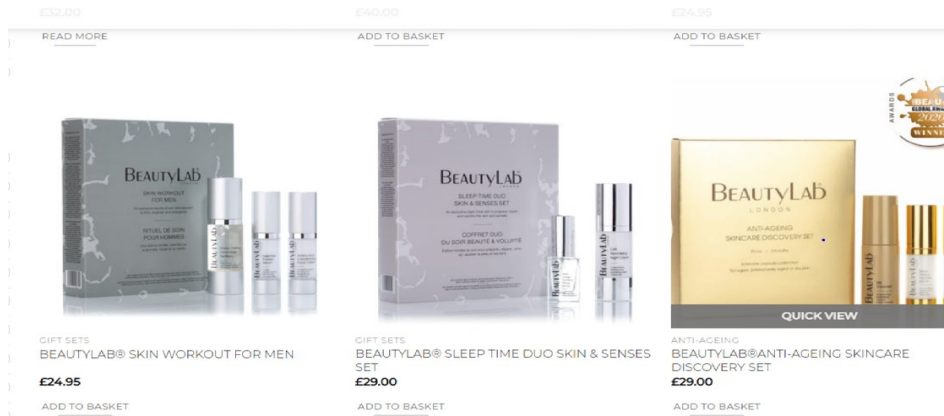
- The goods bearing the mark are sold in the UK online and through the opponent's distributors.⁷
- The opponent has provided sample invoices issued by Gerrard International Ltd., the opponent's sole distributor in the UK since 2016. The invoices are dated between 2016 -2018. The products are identified by codes. The codes commencing with SK in the invoices correspond to products bearing the mark BeautyLab.⁸ Other invoices include those issued in 2016 to an undertaking named Smooth Image Beauty Ltd based in Scotland.⁹ The products sold include calming mask, skin perfecting cream and eye makeup remover.
- The products bearing the mark are also sold online through websites such as the opponent's website www.beautylab.co.uk and the distributor's website www.gerrardinternational.com.¹⁰ Examples of products displayed on website include:

⁷ Witness Statement para 6.

⁸ Exhibits RA1 and RA2

⁹ Exhibit RA1

¹⁰ Exhibits RA3 and Exhibit RA8



- Exhibit 4 includes brochures on a “facial festival” at Harrods and an anti-ageing facial at Fenwick Brent Cross, both do not provide the year of publication. However, according to Mr Aoun, those documents are from 2013 – 2017.
- Evidence also consists of promotional materials in the form of magazines such as European Spa, Guild News and Daily Mail, dated within the relevant period.¹¹ Although the viewership details provided by the opponent of those magazines do not correspond to the dates of articles, the opponent claims that the viewership details should not differ significantly.
- The mark was promoted in trade shows.¹² The evidence includes promotion of the mark in Professional Beauty London, a trade show held in 2016 where 800 brands participated. The trade show attracted “some 33,240 salon, spa and clinic owners, therapists, nail technicians and students”.

That concludes the summary of the evidence to the extent I consider necessary.

67. Enhanced distinctiveness requires recognition of the mark by the relevant public by the date of application of the contested mark, i.e., 9 October 2020 (“the relevant date”). According to Mr Aoun, the annual retail value in the UK

¹¹ Exhibit RA5

¹² Exhibit RA7

for each of the last six years exceeded £1.3 million, and the combined sale value during that period was “considerably higher”. In support of this claim, Mr Aoun sought to file evidence of sales and export figures for the UK and requested confidentiality in relation to those figures. As the Registry refused to grant confidentiality, the opponent subsequently withdrew the evidence of the details of sales/export figures. Even though I do not have the total revenue generated under the mark, I note that Mr Aoun’s statement on the retail sales value is unchallenged, and the figures cited are substantial. Those figures are indicative of the monetary worth of the opponent’s mark. The mark is also promoted in magazines, newspapers, social media and trade shows. In one of the articles, BeautyLab London is described as one of the world’s leading beauty and spa brands.¹³ The amount spent on advertising the mark also appears to be impressive; it was £1.2 million in the last six years. Considering all these factors, I find that the distinctiveness of the mark has been enhanced. Mr Aoun states that the mark has been used in relation to cosmetics, skincare preparations, tanning preparations, sunscreen, after-sun preparations and substances, creams for the skin and body, toiletries, essential oils and fragancing preparations for personal use. As the evidence indicates that the mark has been used in relation to various cosmetic products, I find that the distinctiveness of the mark has been enhanced in relation to those goods. I have already concluded that the inherent distinctiveness of the mark in relation to those products is low, and, therefore, the burden of establishing the enhanced distinctive character is high. The opponent’s evidence, however, is not strong enough to establish that the distinctiveness has been enhanced to a degree that is more than medium.

Comparison of marks

68. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by



¹³ Exhibit RA7

reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

69. It would be wrong, therefore, artificially to 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.

70. The trade marks to be compared are as follows:

Contested trade mark	Opponent's trade mark
	

71. The contested mark consists of the words TIME, BEAUTY and LAB, all presented as separate words in capital letters in an unremarkable font. Above the word appears a device element which could be seen as a letter t with an extension drawn from the down curl in a circular shape around it or as a mere decorative element. The device is presented in a slightly bigger size than the word. As the consumers pay greater attention to the words in a mark, I am of the view that the overall impression and the distinctiveness of the contested

mark is dominated by the words TIME BEAUTY LAB. The device plays a lesser role in the overall impression of the mark.

BEAUTYLAB

73. I now turn to the visual comparison of the marks. Both marks contain the words Beauty and Lab. In terms of differences, in the contested mark, Beauty and Lab are presented as two separate words, while in the opponent's mark it is presented as a single word. The contested mark also contains the word time and a device element which are absent from the opponent's mark. The difference in the letter casing is likely to go unnoticed. Considering these factors, I find that the marks are visually similar to a medium degree.

74. In an aural comparison, the device element in the contested mark would not be pronounced. The marks coincide in the pronunciation of the words "beauty lab". The aural difference between the marks is introduced by the word time. Considering these factors, I find that the marks are aurally similar to a degree that is between medium and high.

75. I now turn to the conceptual comparison. In the opponent's mark, the average consumer would perceive the mark as comprising two separate words and ascribe meaning to each word. The words beauty lab are likely to be understood as a laboratory for manufacturing items that enhance beauty. Whatever meaning is ascribed to those words, it is likely to be the same in both marks. The word time, as argued by the opponent, is likely to be perceived as a characteristic of the applicant's goods and services; for example, the goods and services under the mark are available for a particular period. Considering these factors, I find that the marks are conceptually similar to a high degree.

Likelihood of confusion

76. Following my findings noted earlier in the decision, the opposition against these goods and services fails:

Class 10: Babies' bottles

Class 21: Thermally insulated containers for food; drinking vessels

Class 35: Import-export agency services

77. I must now consider the matter in relation to those goods and services in the application where I have found identity or similarity with the opponent's goods and services. In the notional assessment I undertake to determine whether there is a likelihood of confusion, I need to bear in mind several factors. The first is the interdependency principle, i.e. a greater degree of similarity between the respective goods and services may be offset by a lesser degree of similarity between the trade marks, and vice versa (*Canon* at [17]). It is also necessary for me to bear in mind the distinctive character of the opponent's trade mark, as the more distinctive the trade mark is, the greater the likelihood of confusion (*Sabel* at [24]). I must also keep in mind the average consumer for the goods, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks, relying instead upon the imperfect picture of them they have retained in mind (*Lloyd Schuhfabrik* at [26]).

78. Confusion can be direct (which occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertaking being the same or related).

79. The difference between direct and indirect confusion was explained in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, by Iain Purvis Q.C., sitting as the Appointed Person, where he explained that:

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example”).

They are only examples, and every such case must be decided on its merits.

80. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,¹⁴ Arnold L.J. referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*¹⁵ where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold L.J. agreed pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

81. Earlier in this decision, I concluded:

- That the contested goods and services are either identical or similar to varying degrees;
- That the goods and services will be selected primarily by visual means, with a low to medium degree of attention paid by the general public and a fairly high degree of attention by the professional users;
- That the marks are visually similar to a medium degree; aurally similar to between a medium and a high degree, and conceptually similar to a high degree;
- That the opponent’s mark is inherently distinctive to a low or low to medium degree and the distinctiveness of the mark has been enhanced in respect of some of the goods at issue.

82. I am of the view that the presence of the word TIME and the device element in the contested mark is prominent enough to dispel a likelihood of direct confusion.

83. I now turn to indirect confusion. I find that the visual, aural and conceptual similarities arising from the presence of the common words Beauty and Lab is enough to cause indirect confusion. Despite the fact that the earlier mark possesses only a limited inherent distinctive character, and in relation to cosmetic products, the inherent distinctive character has been enhanced to no more than a medium degree through use, the points of difference between the

¹⁴ [2021] EWCA Civ 1207

¹⁵ BL O/219/16

marks is not enough to avoid a likelihood of indirect confusion. Even though the word Beautylab is presented as two separate words in the contested mark, the average consumer, who rarely gets a chance to compare marks side by side, is unlikely to notice this difference. The other points of difference are introduced by less dominant and descriptive features, namely the device element and the word time. Therefore, even when encountered with goods and services that are similar only to a low degree, the average consumer is likely to think that there is an economic connection between the undertakings or believe that the applicant's mark is a sub-brand of the opponent's mark.

84. The opposition, therefore, succeeds partially under section 5(2)(b) in respect of the following goods and services:

Class 3 Cosmetic preparations for baths; Beauty masks; Mouthwashes, not for medical purposes; Shining preparations [polish]; Cosmetics for animals; Cosmetics; Cotton wool for cosmetic purposes; Stain removers; Toothpaste; Depilatories; Cakes of toilet soap; Cosmetic kits; Breath freshening sprays; Dental bleaching gels; Air fragrancing preparations; Massage gels other than for medical purposes; Scented water; Make-up removing preparations; Cotton wool impregnated with make-up removing preparations.

Class 5 Mothproofing preparations; Bath preparations for medical purposes; Dental lacquer; Depuratives; Gelatine for medical purposes; Sanitary knickers; Sanitary napkins; Pharmaceutical preparations for skin care; Dietetic substances adapted for medical use; Mouthwashes for medical purposes; Nutritional supplements; Disinfectants; Medicated toiletry preparations; Medicated toothpaste; Massage gels for medical purposes.

Class 8 Beard clippers; Hand tools, hand-operated; Razor cases; Hand implements for hair curling; Razor blades; Razors, electric or non-electric; Hair clippers for personal use, electric and non-

electric; Depilation appliances, electric and non-electric; Eyelash curlers; Laser hair removal apparatus, other than for medical purposes.

Class 10 Orthopaedic articles; Esthetic massage apparatus; Dental apparatus and instruments; Lasers for medical purposes; Massage apparatus; Medical apparatus and instruments; Dental apparatus, electric; Fumigation apparatus for medical purposes; Orthodontic appliances; Therapeutic facial masks; Sanitary masks for medical purposes; LED masks for therapeutic purposes.

Class 21 Brushes; Fitted vanity cases; Cleaning instruments, hand-operated; Toilet utensils; Toothbrushes; Toothbrushes, electric; Heads for electric toothbrushes; Water apparatus for cleaning teeth and gums; Floss for dental purposes; Cosmetic utensils; Toothpicks; Oral hygiene devices, namely, toothbrushes and oral irrigators, other than for use in dentistry; Make-up sponges.

Class 35 Marketing; Demonstration of goods; Direct mail advertising; Publication of publicity texts; Advertising; Presentation of goods on communication media, for retail purposes; Sales promotion for others; Procurement services for others [purchasing goods and services for other businesses]; Personnel management consultancy; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies.

Section 5(3)

85. Section 5(3) states:

“(3) A trade mark which-

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

86. Section 5(3A) states:

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

87. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors*, *Case 252/07, Intel*, *Case C-408/01, Adidas Salomon*, *Case C-487/07, L’Oreal v Bellure*, *Case C-323/09, Marks and Spencer v Interflora* and *Case C383/12P, Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

- a. The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.
- b. The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.
- c. It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

- d. Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.
- e. Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.
- f. Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77.
- g. The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.
- h. Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

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

Reputation

88. In order to succeed under section 5(3) ground, the opponent must demonstrate by way of evidence that the earlier marks it relies on are known by a significant part of the relevant public in the UK for the goods and services relied upon. As marks identified as Marks 1 and 3 are registered in the UK, I will focus on those marks for the assessment of reputation. For the reasons given at paragraph 63, I am satisfied that the earlier marks had at the relevant date a reputation for cosmetic products. The reputation shown was reasonable.

Link

89. Whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors for assessing the link are contained in *Intel* and I have already made findings in respect of most of those, which I adopt and remind myself of here. They are that the marks are visually similar to a medium degree; aurally similar to between a medium and a high degree, and conceptually similar to a high degree. The earlier marks are inherently distinctive to a low degree for the goods for which the opponent has shown reputation but the distinctiveness in relation to those goods has been enhanced through use. I have also found that the goods and services will be

bought by the general public and professional users, paying varying degrees of attention and selecting the goods and services mainly through visual means. The goods for which the opponent has shown reputation are either identical or similar to all of the applicant's goods listed at paragraph 84 of this decision and some of the services namely the wholesale and retail services. There is a likelihood of confusion in respect of those goods and services. I will return to the applicant's remaining goods and services shortly. Taking account of the above factors, I consider that the similarity between the marks combined with the reputation shown will be sufficient for a link to be made by a significant part of the relevant public.

90. The applicant's *marketing, demonstration of goods, direct mail advertising, publication of publicity texts, advertising, presentation of goods on communication media, for retail purposes, sales promotion for others, procurement services for others [purchasing goods and services for other businesses], personnel management consultancy services* are usually offered by specialist companies such as consultants and agencies that help businesses in advertising and marketing their products. The nature and purpose of those services differ from the opponent's cosmetic products in Class 3. They do not coincide in channels of trade or producers/suppliers. The goods and services are neither complementary nor in competition. Considering these factors, I find that the above mentioned services are dissimilar to the opponent's goods for which reputation has been shown. I note here that the additional protection afforded by section 5(3) is intended to extend the protection afforded to earlier marks with a reputation to cases where the goods and services are dissimilar. However, considering the distance between the goods and services and bearing in mind that the reputation shown is not strong, I find that a link will not be made in relation to following goods and services that are dissimilar to the opponent's cosmetics:

Class 10: Babies' bottles

Class 21: Thermally insulated containers for food; drinking vessels

Class 35: Marketing; Demonstration of goods; Direct mail advertising; Publication of publicity texts; Advertising; Presentation of goods on

communication media, for retail purposes; Sales promotion for others; Procurement services for others [purchasing goods and services for other businesses]; Personnel management consultancy; Import-export agency services.

91. The opposition against those goods and services under section 5(3), therefore, fails.

92. As I have found that a link will be made between some of the goods and services, I will proceed to consider the different heads of damage.

Unfair advantage

93. In *Jack Wills Limited v House of Fraser (Stores) Limited* [2014] EWHC 110 (Ch) Arnold J. considered the earlier case law and concluded that:

“80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill”.

94. The opponent submits that by promoting its own mark on a substantial scale, the opponent will be contributing to the promotion and exposure of the contested mark and the goods and services offered under it. The opponent further submits that the applicant would, therefore, benefit from the earlier

marks' power of attraction, reputation and exploit, without using financial compensation, the marketing effort expended by the opponent. I agree. The contested mark would gain an advantage. The extent of similarity between the marks and the identity/similarity between the goods and services would enable the contested mark to attract those customers who would mistake the contested mark for the opponent's mark which it may not otherwise have obtained. In doing so, it would free ride on the reputation of the earlier marks and gain an advantage which is unfair because the applicant would be exploiting the time and money that the opponent has expended in creating its reputation. This head of damage is made out.

95. As damage is made out on the basis of unfair advantage, I do not consider it necessary to go on to consider the other heads of damage.

96. The opposition based upon section 5(3) succeeds partially.

Section 5(4)(a)

97. The ground of objection under section 5(4)(a) adds nothing to the ground of objection under section 5(2) of the Act. I do not, therefore, find it necessary to consider it further.

Conclusion

98. The opponent is partially successful in its opposition. The application will, therefore, be refused for goods and services given at paragraph 76 of this decision.

Costs

99. The opponent has been largely successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. I award costs to the opponent on the following basis:

Filing a Notice of opposition and considering the applicant's counterstatement	£400
Filing evidence	£400
Filing submissions	£300
Official fee	£200
Total	£1,300

100. I, therefore, order Evergreen Fashion UK Ltd. to pay Kunert Fashion GmbH the sum of **£1,300**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 11th day of July 2022

Karol Thomas
For the Registrar
The Comptroller-General

Annex

BEAUTYLAB

(Registration no. 3444211)

Class 3 Cosmetics; aftershave moisturising cream; aftershave; after-sun gels [cosmetics]; after sun creams; age spot reducing creams; alcoholic solvents being cleaning preparations; anti-aging creams; anti-wrinkle cream; aromatherapy creams; artificial tanning preparations; auto-tanning creams; baby oils; base cream; bath creams; bath oil; beauty masks; beauty creams; beauty gels; beauty lotions; beauty milks; blush; blush pencils; body lotions; body cream; body mask cream; body masks; body oil; body oil spray; body scrub; bronzing creams; cleaning compositions for spot removal; cosmetics for bronzing the skin; cosmetics for the treatment of dry skin; cream for whitening the skin; creams for cellulite reduction; creams for tanning the skin; cuticle cream; depilatories; essential oils for personal use; ethereal oils; exfoliant creams; non-medicated face cream; facial cleansers; facial cream; facial masks; facial scrubs; facial toners [cosmetic]; facial washes [cosmetic]; hair cream; hair removing cream; hand cleansers; hand washes; lip balm; lip cream; lip gloss; lip polisher; lipstick; lotions for cellulite reduction; make-up foundations; massage oil; moisturizer; nail cream; nail gel; nail strengtheners; nappy cream [non-medicated]; night cream; non-medicated foot cream; non-medicated scalp treatment cream; perfumed soap; preservative creams for leather; non-medicated scalp treatments; scouring solutions; shampoo; shaving cream; skin cleansers; skin cleansing cream; skin toners; soap; spot remover; sun barriers [cosmetics]; sun blocking lipsticks [cosmetics]; sun bronzers; sun tan lotion; sun tan oil; sun-block lotions; sun-tanning oils; sun-tanning preparations; sunscreens;

talcum powder; tanning creams; tanning gels [cosmetics]; tanning preparations; toiletries; toilet waters; toners for cosmetic use; toning creams [cosmetic]; toning lotion, for the face, body and hands; topical skin sprays for cosmetic purposes; washing creams; washing preparations for personal use; wipes impregnated with a skin cleanser; wrinkle resistant cream; soaps; bath salts; bubble bath; adhesives for cosmetic use.

Class 35 Retail services in relation to aftershave moisturising cream; retail services in relation to aftershave; retail services in relation to after-sun gels [cosmetics]; retail services in relation to after sun creams; retail services in relation to age spot reducing creams; retail services in relation to alcoholic solvents being cleaning preparations; retail services in relation to anti-aging creams; retail services in relation to anti-wrinkle cream; retail services in relation to aromatherapy creams; retail services in relation to artificial tanning preparations; retail services in relation to auto-tanning creams; retail services in relation to baby oils; retail services in relation to base cream; retail services in relation to bath creams; retail services in relation to bath oil; retail services in relation to beauty masks; retail services in relation to beauty creams; retail services in relation to beauty gels; retail services in relation to beauty lotions; retail services in relation to beauty milks; retail services in relation to blush; retail services in relation to blush pencils; retail services in relation to body lotions; retail services in relation to body cream; retail services in relation to body mask cream; retail services in relation to body masks; retail services in relation to body oil; retail services in relation to body oil spray; retail services in relation to body scrub; retail services in relation to bronzing creams; retail services in relation to cleaning compositions for spot removal; retail services in relation to cosmetics; retail services in relation to cosmetics for bronzing the skin; retail services in relation to cosmetics for the treatment of dry skin; retail services in relation to cream for whitening the

skin; retail services in relation to creams for cellulite reduction; retail services in relation to creams for tanning the skin; retail services in relation to cuticle cream; retail services in relation to depilatories; retail services in relation to essential oils for personal use; retail services in relation to ethereal oils; retail services in relation to exfoliant creams; retail services in relation to non-medicated face cream; retail services in relation to facial cleansers; retail services in relation to facial cream; retail services in relation to facial masks; retail services in relation to facial scrubs; retail services in relation to facial toners [cosmetic]; retail services in relation to facial washes [cosmetic]; retail services in relation to hair cream; retail services in relation to hair removing cream; retail services in relation to hand cleansers; retail services in relation to hand washes; retail services in relation to lip balm; retail services in relation to lip cream; retail services in relation to lip gloss; retail services in relation to lip polisher; retail services in relation to lipstick; retail services in relation to lotions for cellulite reduction; retail services in relation to make-up foundations; retail services in relation to massage oil; retail services in relation to moisturizer; retail services in relation to nail cream; retail services in relation to nail gel; retail services in relation to nail strengtheners; retail services in relation to nappy cream [non-medicated]; retail services in relation to night cream; retail services in relation to non-medicated foot cream; retail services in relation to non-medicated scalp treatment cream; retail services in relation to perfumed soap; retail services in relation to preservative creams for leather; retail services in relation to non-medicated scalp treatments; retail services in relation to scouring solutions; retail services in relation to shaving cream; retail services in relation to skin cleansers; retail services in relation to skin cleansing cream; retail services in relation to skin toners; retail services in relation to soap; retail services in relation to spot remover; retail services in relation to sun barriers

[cosmetics]; retail services in relation to sun blocking lipsticks [cosmetics]; retail services in relation to sun bronzers; retail services in relation to sun tan lotion; retail services in relation to sun tan oil; retail services in relation to sun-block lotions; retail services in relation to sun-tanning oils; retail services in relation to sun-tanning preparations; retail services in relation to tanning creams; retail services in relation to tanning gels [cosmetics]; retail services in relation to toiletries; retail services in relation to tanning preparations; retail services in relation to toilet waters; retail services in relation to toners for cosmetic use; retail services in relation to washing creams; retail services in relation to washing preparations for personal use; retail services in relation to waterless soap; retail services in relation to wipes impregnated with a skin cleanser; retail services in relation to wrinkle resistant cream; retail services in relation to soaps; retail services in relation to bath salts; retail services in relation to bubble bath; retail services in relation to adhesives for cosmetic use; retail services in relation to acne cleansers [pharmaceutical preparations]; retail services in relation to acne creams [pharmaceutical preparations]; retail services in relation to absorbent cotton; retail services in relation to medicated anti-bacterial face washes; retail services in relation to antiseptic cleansers; retail services in relation to medicated creams for application after exposure to the sun; retail services in relation to medicated bath preparations; retail services in relation to medicated creams for the lips; retail services in relation to crystals for therapeutic purposes; retail services in relation to dietary supplements; retail services in relation to medicated face cream; retail services in relation to hand creams for medical use; retail services in relation to medicated face scrubs; retail services in relation to medicated foot creams; retail services in relation to medicated creams; retail services in relation to medicated lip balm; retail services in relation to medicated skin creams; retail

services in relation to medicinal oils; retail services in relation to night creams [medicated]; retail services in relation to peptones for pharmaceutical purposes; retail services in relation to pharmaceutical creams; retail services in relation to pharmaceuticals; retail services in relation to medicated protective creams; retail services in relation to sanitary preparations for medical purposes; retail services in relation to sanitizing wipes; retail services in relation to medicated scalp treatments; retail services in relation to scrubs [preparations] for medical use; retail services in relation to skin care creams for medical use; retail services in relation to therapeutic creams [medical]; retail services in relation to therapeutic medicated bath preparations; retail services in relation to vaginal washes; retail services in relation to disinfectant washes [other than soap]; retail services in relation to dietary Brushes supplements; retail services in relation to disinfecting handwash; retail services in relation to hand lotions [medicated]; retail services in relation to medicated skin lotions; retail services in relation to cosmetic utensils; retail services in relation to cosmetics brushes; retail services in relation to cosmetic bags; retail services in relation to cosmetics applicators; retail services in relation to cosmetic pencil sharpeners; retail services in relation to cosmetic powder compacts; retail services in relation to containers for cosmetics; retail services in relation to apparatus for the therapeutic stimulation of the body; retail services in relation to apparatus for the therapeutic stimulation of the muscles; retail services in relation to bio therapeutic facial masks; retail services in relation to body toner apparatus [therapeutic]; retail services in relation to face masks for medical use; retail services in relation to gas laser apparatus for medical treatment; retail services in relation to high frequency electromagnetic therapy apparatus; retail services in relation to hot air therapeutic apparatus; retail services in relation to hot therapy apparatus; retail services in relation to hot therapy

instruments; retail services in relation to lasers for medical purposes; retail services in relation to low frequency electric therapy apparatus; retail services in relation to magnets for therapeutic use; retail services in relation to medical skin abraders; retail services in relation to medical therapy instruments; retail services in relation to static electric therapy apparatus; retail services in relation to therapeutic apparatus incorporating massaging facilities; retail services in relation to hair prostheses; retail services in relation to therapeutic hosiery; retail services in relation to visible light treatment instruments; retail services in relation to water therapy apparatus for medical use; retail services in relation to water treatment apparatus for medical use; retail services in relation to beauty cases; retail services in relation to hand tools for use in beauty care; retail services in relation to publications; business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; advertising and promotional services; advertising and marketing services, namely promoting the products and services of others; business data analysis; business monitoring and consulting services, namely, data and behavior analysis to provide strategy, insight, and marketing guidance, and for analyzing, understanding and predicting behavior and motivations, and market trends; promoting the goods and services of others by means of operating an online platform with links to the resources of others; providing a searchable online advertising guide featuring the goods and services of others; electronic commerce services, namely, providing information about products and services via telecommunication networks for advertising and sales purposes; administrative management of beauty salons and clinics; commercial information and advice services for consumers in the fields of beauty and cosmetic products.

Class 44 Therapeutic services; hygiene services; hygienic and beauty care for human beings or animals; medical analysis for the diagnosis and treatment of persons; pharmacy advice; beauty consultation services; beauty treatment services; beauty therapy treatments; colour analysis [beauticians' services]; aromatherapy services; reflexology services; beauty clinic services; beauty salon services; spa services; make-up services; massage services; body and skin care services; beauty care services provided by a health spa; manicure services; pedicure services; cosmetic treatment services; cosmetology; esthiology services; aesthetics consultancy services; body waxing services for the human body; cosmetic body care services; cosmetic treatment services for the body, face and hair; facial beauty treatment services; rental of machines and apparatus for use in beauty salons and clinics; information, consultancy and advise services relating to the aforesaid services; consultancy provided via the Internet in the field of body and beauty care.

BEAUTYLAB

(Registration no. 2253190)

Class 3 Cosmetics, skincare and haircare preparations, perfumes, non-medicated toilet preparations, soaps and toilet articles, dentifrices, essential oils and essential oils blends.

Class 42 Health and beauty salons, provision of health and beauty treatments.

BEAUTYLAB

(Registration no. 3574459)

Class 3 Acne cleansers [pharmaceutical preparations]; acne creams [pharmaceutical preparations]; absorbent cotton; antiseptic body care preparations; body creams [medicated]; body creams for pharmaceutical use; body gels for pharmaceutical use;

medicated body gels; topical gels for medical and therapeutic use; massage gels for medicated purposes; medicated body powder; medicated anti-bacterial face washes; antiseptic cleansers; medicated creams for application after exposure to the sun; medicated bath preparations; medicated creams for the lips; crystals for therapeutic purposes; medicated face cream; hand creams for medical use; medicated face scrubs; medicated foot creams; medicated creams; medicated lip balm; medicated skin creams; medicated skin lotions; medicated skin care preparations; medicinal oils; night creams [medicated]; peptones for pharmaceutical purposes; pharmaceutical creams; pharmaceuticals; pharmaceutical preparations for skin care; pharmacological preparations for skin care; medicated protective creams; sanitary preparations for medical purposes; sanitizing wipes; medicated scalp treatments; scrubs [preparations] for medical use; skin care creams for medical use; elixirs for calming the skin; therapeutic creams [medical]; therapeutic medicated bath preparations; vaginal washes; disinfectant washes [other than soap]; dietary food supplements; dietary supplements; cleaning cloths impregnated with disinfectant for hygiene purposes; disinfecting handwash; hand-sanitizing preparations; hand lotions [medicated]; cleansing solutions for medical use.

Class 10 Apparatus for the therapeutic stimulation of the body; apparatus for the therapeutic toning of the body; apparatus for the therapeutic stimulation of the muscles; bio therapeutic facial masks; body toner apparatus [therapeutic]; body massagers; face masks for medical use; gas laser apparatus for medical treatment; high frequency electromagnetic therapy apparatus; hot air therapeutic apparatus; hot therapy apparatus; hot therapy instruments; laser apparatus for therapeutic use; low frequency electric therapy apparatus; magnets for therapeutic use; medical skin abraders; medical therapy instruments; electric therapy apparatus; therapeutic apparatus incorporating massaging

facilities; therapeutic devices for the removal of hair; therapeutic hosiery; visible light treatment instruments; water therapy apparatus for medical use; water treatment apparatus for medical use; medical skin enhancing apparatus; medical apparatus for the toning of the skin; medical apparatus for the toning of the body; apparatus and instruments for the rejuvenation of the skin; medical apparatus and instruments for the care of the skin; pads for medical use in applying a fluid to the skin; skin temperature indicators for medical use; ultrasound apparatus for medical purposes; ultrasound therapy apparatus; apparatus for the treatment of cellulite; electrodes for use with medical apparatus and instruments; apparatus for muscle stimulation; apparatus for use in toning and exercising muscles; parts and fittings for all the aforesaid goods.

Class 21 Applicators for cosmetics; hand tools for the application of cosmetics; toiletry applicators; cosmetic and toiletry utensils; cosmetics brushes; make-up brushes; cosmetic spatulas; cosmetic sponges; applicators for applying eye make-up; hair brushes and combs; shaving brushes; sponges; make-up sponges; body sponges; cosmetic bags [fitted]; fitted toilet bags; fitted vanity cases; containers for cosmetics and cosmetic utensils; cases for cosmetics; cases adapted for cosmetic utensils; cases adapted for toilet utensils; toiletry cases; cases for toiletry articles; dispensers for cosmetics; skin care cream dispensers; body cleanser dispensers; racks for cosmetics; racks for skin care creams; racks for body cleansers; holders for cosmetics; make-up removing appliances; cleaning cloth; abrasive pads; articles for cleaning purposes.

Class 41 Education; providing of training; entertainment; sporting and cultural activities; coaching; publication services; meditation training; personal development courses; education and training services relating to the provision of therapy, personal treatments, grooming, and hygiene services; organising of exhibitions, fora,

competitions, symposia and shows; education, training and cultural services relating to therapy, hygiene, beauty care, medical analysis, pharmacy advice, the selection and use of perfumery, toiletries, cosmetic and pharmaceutical products, colour analysis and personal appearance; education, training and cultural services relating to aromatherapy, reflexology, spa services, beauty treatment services, make-up services, massage services, manicure services, pedicure services, cosmetic treatment services, cosmetology, esthiology services, and aesthetics; instruction in body grooming; instruction in cosmetic beauty; teaching of beauty skills; educational seminars relating to beauty therapy; information, consultancy and advise services relating to the aforesaid services; providing online publications, not downloadable; providing on-line videos, not downloadable.

Class 42 Computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; application provider services (ASP); hosting multimedia content

for others; hosting multimedia entertainment and educational content for others; information technology services for the pharmaceutical and healthcare industries.

BEAUTYLAB

EU registration no. 018065724

Class 3 Cosmetics; aftershave moisturising cream; aftershave; after-sun gels [cosmetics]; after sun creams; age spot reducing creams; alcoholic solvents being cleaning preparations; anti-aging creams; anti-wrinkle cream; aromatherapy creams; artificial tanning preparations; auto-tanning creams; baby oils; base cream; bath creams; bath oil; beauty masks; beauty creams; beauty gels; beauty lotions; beauty milks; blush; blush pencils; body lotions; body cream; body mask cream; body masks; body oil; body oil spray; body scrub; bronzing creams; cleaning compositions for spot removal; cosmetics for bronzing the skin; cosmetics for the treatment of dry skin; cream for whitening the skin; creams for cellulite reduction; creams for tanning the skin; cuticle cream; depilatories; essential oils for personal use; ethereal oils; exfoliant creams; non-medicated face cream; facial cleansers; facial cream; facial masks; facial scrubs; facial toners [cosmetic]; facial washes [cosmetic]; hair cream; hair removing cream; hand cleansers; hand washes; lip balm; lip cream; lip gloss; lip polisher; lipstick; lotions for cellulite reduction; make-up foundations; massage oil; moisturizer; nail cream; nail gel; nail strengtheners; nappy cream [non-medicated]; night cream; non-medicated foot cream; non-medicated scalp treatment cream; perfumed soap; preservative creams for leather; non-medicated scalp treatments; scouring solutions; shampoo; shaving cream; skin cleansers; skin cleansing cream; skin toners; soap; spot remover; sun barriers [cosmetics]; sun blocking lipsticks [cosmetics]; sun bronzers; sun tan lotion; sun tan oil; sun-block

lotions; sun-tanning oils; sun-tanning preparations; sunscreens; talcum powder; tanning creams; tanning gels [cosmetics]; tanning preparations; toiletries; toilet waters; toners for cosmetic use; toning creams [cosmetic]; toning lotion, for the face, body and hands; topical skin sprays for cosmetic purposes; washing creams; washing preparations for personal use; wipes impregnated with a skin cleanser; wrinkle resistant cream; soaps; bath salts; bubble bath; adhesives for cosmetic use.

Class 35 Retail services in relation to aftershave moisturising cream; retail services in relation to aftershave; retail services in relation to after-sun gels [cosmetics]; retail services in relation to after sun creams; retail services in relation to age spot reducing creams; retail services in relation to alcoholic solvents being cleaning preparations; retail services in relation to anti-aging creams; retail services in relation to anti-wrinkle cream; retail services in relation to aromatherapy creams; retail services in relation to artificial tanning preparations; retail services in relation to auto-tanning creams; retail services in relation to baby oils; retail services in relation to base cream; retail services in relation to bath creams; retail services in relation to bath oil; retail services in relation to beauty masks; retail services in relation to beauty creams; retail services in relation to beauty gels; retail services in relation to beauty lotions; retail services in relation to beauty milks; retail services in relation to blush; retail services in relation to blush pencils; retail services in relation to body lotions; retail services in relation to body cream; retail services in relation to body mask cream; retail services in relation to body masks; retail services in relation to body oil; retail services in relation to body oil spray; retail services in relation to body scrub; retail services in relation to bronzing creams; retail services in relation to cleaning compositions for spot removal; retail services in relation to cosmetics; retail services in relation to cosmetics for bronzing the skin; retail services in relation to cosmetics for the treatment

of dry skin; retail services in relation to cream for whitening the skin; retail services in relation to creams for cellulite reduction; retail services in relation to creams for tanning the skin; retail services in relation to cuticle cream; retail services in relation to depilatories; retail services in relation to essential oils for personal use; retail services in relation to ethereal oils; retail services in relation to exfoliant creams; retail services in relation to non-medicated face cream; retail services in relation to facial cleansers; retail services in relation to facial cream; retail services in relation to facial masks; retail services in relation to facial scrubs; retail services in relation to facial toners [cosmetic]; retail services in relation to facial washes [cosmetic]; retail services in relation to hair cream; retail services in relation to hair removing cream; retail services in relation to hand cleansers; retail services in relation to hand washes; retail services in relation to lip balm; retail services in relation to lip cream; retail services in relation to lip gloss; retail services in relation to lip polisher; retail services in relation to lipstick; retail services in relation to lotions for cellulite reduction; retail services in relation to make-up foundations; retail services in relation to massage oil; retail services in relation to moisturizer; retail services in relation to nail cream; retail services in relation to nail gel; retail services in relation to nail strengtheners; retail services in relation to nappy cream [non-medicated]; retail services in relation to night cream; retail services in relation to non-medicated foot cream; retail services in relation to non-medicated scalp treatment cream; retail services in relation to perfumed soap; retail services in relation to preservative creams for leather; retail services in relation to non-medicated scalp treatments; retail services in relation to scouring solutions; retail services in relation to shaving cream; retail services in relation to skin cleansers; retail services in relation to skin cleansing cream; retail services in relation to skin toners; retail services in relation to soap; retail services in

relation to spot remover; retail services in relation to sun barriers [cosmetics]; retail services in relation to sun blocking lipsticks [cosmetics]; retail services in relation to sun bronzers; retail services in relation to sun tan lotion; retail services in relation to sun tan oil; retail services in relation to sun-block lotions; retail services in relation to sun-tanning oils; retail services in relation to sun-tanning preparations; retail services in relation to tanning creams; retail services in relation to tanning gels [cosmetics]; retail services in relation to toiletries; retail services in relation to tanning preparations; retail services in relation to toilet waters; retail services in relation to toners for cosmetic use; retail services in relation to washing creams; retail services in relation to washing preparations for personal use; retail services in relation to waterless soap; retail services in relation to wipes impregnated with a skin cleanser; retail services in relation to wrinkle resistant cream; retail services in relation to soaps; retail services in relation to bath salts; retail services in relation to bubble bath; retail services in relation to adhesives for cosmetic use; retail services in relation to acne cleansers [pharmaceutical preparations]; retail services in relation to acne creams [pharmaceutical preparations]; retail services in relation to absorbent cotton; retail services in relation to medicated anti-bacterial face washes; retail services in relation to antiseptic cleansers; retail services in relation to medicated creams for application after exposure to the sun; retail services in relation to medicated bath preparations; retail services in relation to medicated creams for the lips; retail services in relation to crystals for therapeutic purposes; retail services in relation to dietary supplements; retail services in relation to medicated face cream; retail services in relation to hand creams for medical use; retail services in relation to medicated face scrubs; retail services in relation to medicated foot creams; retail services in relation to medicated creams; retail services in relation to medicated lip

balm; retail services in relation to medicated skin creams; retail services in relation to medicinal oils; retail services in relation to night creams [medicated]; retail services in relation to peptones for pharmaceutical purposes; retail services in relation to pharmaceutical creams; retail services in relation to pharmaceuticals; retail services in relation to medicated protective creams; retail services in relation to sanitary preparations for medical purposes; retail services in relation to sanitizing wipes; retail services in relation to medicated scalp treatments; retail services in relation to scrubs [preparations] for medical use; retail services in relation to skin care creams for medical use; retail services in relation to therapeutic creams [medical]; retail services in relation to therapeutic medicated bath preparations; retail services in relation to vaginal washes; retail services in relation to disinfectant washes [other than soap]; retail services in relation to dietary food supplements; retail services in relation to disinfecting handwash; retail services in relation to hand lotions [medicated]; retail services in relation to medicated skin lotions; retail services in relation to cosmetic utensils; retail services in relation to cosmetics brushes; retail services in relation to cosmetic bags; retail services in relation to cosmetics applicators; retail services in relation to cosmetic pencil sharpeners; retail services in relation to cosmetic powder compacts; retail services in relation to containers for cosmetics; retail services in relation to apparatus for the therapeutic stimulation of the body; retail services in relation to apparatus for the therapeutic stimulation of the muscles; retail services in relation to bio therapeutic facial masks; retail services in relation to body toner apparatus [therapeutic]; retail services in relation to face masks for medical use; retail services in relation to gas laser apparatus for medical treatment; retail services in relation to high frequency electromagnetic therapy apparatus; retail services in relation to hot air therapeutic apparatus; retail services in relation

to hot therapy apparatus; retail services in relation to hot therapy instruments; retail services in relation to lasers for medical purposes; retail services in relation to low frequency electric therapy apparatus; retail services in relation to magnets for therapeutic use; retail services in relation to medical skin abraders; retail services in relation to medical therapy instruments; retail services in relation to static electric therapy apparatus; retail services in relation to therapeutic apparatus incorporating massaging facilities; retail services in relation to hair prostheses; retail services in relation to therapeutic hosiery; retail services in relation to visible light treatment instruments; retail services in relation to water therapy apparatus for medical use; retail services in relation to water treatment apparatus for medical use; retail services in relation to beauty cases; retail services in relation to hand tools for use in beauty care; retail services in relation to publications; business management consulting with relation to strategy, marketing, production, personnel and retail sale matters; advertising and promotional services; advertising and marketing services, namely promoting the products and services of others; business data analysis; business monitoring and consulting services, namely, data and behavior analysis to provide strategy, insight, and marketing guidance, and for analyzing, understanding and predicting behavior and motivations, and market trends; promoting the goods and services of others by means of operating an online platform with links to the resources of others; providing an online searchable database featuring goods and services of others; electronic commerce services, namely, providing information about products and services via telecommunication networks for advertising and sales purposes; administrative management of beauty salons and clinics; commercial information and advice services for consumers in the fields of beauty and cosmetic products.

Class 44 Therapeutic services; hygiene services; hygienic and beauty care for human beings or animals; medical analysis for the diagnosis and treatment of persons; pharmacy advice; beauty consultation services; beauty treatment services; beauty therapy treatments; colour analysis [beauticians' services]; personal appearance services; aromatherapy services; reflexology services; beauty clinic services; beauty salon services; spa services; make-up services; massage services; body and skin care services; beauty care services provided by a health spa; manicure services; pedicure services; cosmetic treatment services; cosmetology; esthiology services; aesthetics consultancy services; body waxing services for the human body; cosmetic body care services; cosmetic treatment services for the body, face and hair; facial beauty treatment services; rental of machines and apparatus for use in beauty salons and clinics; information, consultancy and advise services relating to the aforesaid services; consultancy provided via the Internet in the field of body and beauty care.

BEAUTYLAB

EU registration no. 018248086

Class 5 Acne cleansers [pharmaceutical preparations]; acne creams [pharmaceutical preparations]; absorbent cotton; antiseptic body care preparations; body creams [medicated]; body creams for pharmaceutical use; body gels for pharmaceutical use; medicated body gels; topical gels for medical and therapeutic use; massage gels for medicated purposes; medicated body powder; medicated anti-bacterial face washes; antiseptic cleansers; medicated creams for application after exposure to the sun; medicated bath preparations; medicated creams for the lips; crystals for therapeutic purposes; medicated face cream; hand creams for medical use; medicated face scrubs; medicated foot creams; medicated creams; medicated lip balm; medicated

skin creams; medicated skin lotions; medicated skin care preparations; medicinal oils; night creams [medicated]; peptones for pharmaceutical purposes; pharmaceutical creams; pharmaceuticals; pharmaceutical preparations for skin care; pharmacological preparations for skin care; medicated protective creams; sanitary preparations for medical purposes; sanitizing wipes; medicated scalp treatments; scrubs [preparations] for medical use; skin care creams for medical use; elixirs for calming the skin; therapeutic creams [medical]; therapeutic medicated bath preparations; vaginal washes; disinfectant washes [other than soap]; dietary food supplements; dietary supplements; cleaning cloths impregnated with disinfectant for hygiene purposes; disinfecting handwash; hand-sanitizing preparations; hand lotions [medicated]; cleansing solutions for medical use.

Class 10 Apparatus for the therapeutic stimulation of the body; apparatus for the therapeutic toning of the body; apparatus for the therapeutic stimulation of the muscles; bio therapeutic facial masks; body toner apparatus [therapeutic]; body massagers; face masks for medical use; gas laser apparatus for medical treatment; high frequency electromagnetic therapy apparatus; hot air therapeutic apparatus; hot therapy apparatus; hot therapy instruments; laser apparatus for therapeutic use; low frequency electric therapy apparatus; magnets for therapeutic use; medical skin abraders; medical therapy instruments; electric therapy apparatus; therapeutic apparatus incorporating massaging facilities; therapeutic devices for the removal of hair; therapeutic hosiery; visible light treatment instruments; water therapy apparatus for medical use; water treatment apparatus for medical use; medical skin enhancing apparatus; medical apparatus for the toning of the skin; medical apparatus for the toning of the body; apparatus and instruments for the rejuvenation of the skin; medical apparatus and instruments for the care of the skin; pads for medical use in applying a fluid to the skin; skin temperature

indicators for medical use; ultrasound apparatus for medical purposes; ultrasound therapy apparatus; apparatus for the treatment of cellulite; electrodes for use with medical apparatus and instruments; apparatus for muscle stimulation; apparatus for use in toning and exercising muscles; parts and fittings for all the aforesaid goods.

Class 21 Applicators for cosmetics; hand tools for the application of cosmetics; toiletry applicators; cosmetic and toiletry utensils; cosmetics brushes; make-up brushes; cosmetic spatulas; cosmetic sponges; applicators for applying eye make-up; hair brushes and combs; shaving brushes; sponges; make-up sponges; body sponges; cosmetic bags [fitted]; fitted toilet bags; fitted vanity cases; containers for cosmetics and cosmetic utensils; cases for cosmetics; cases adapted for cosmetic utensils; cases adapted for toilet utensils; toiletry cases; cases for toiletry articles; dispensers for cosmetics; skin care cream dispensers; body cleanser dispensers; racks for cosmetics; racks for skin care creams; racks for body cleansers; holders for cosmetics; make-up removing appliances; cleaning cloth; abrasive pads; articles for cleaning purposes.

Class 41 Education; providing of training; entertainment; sporting and cultural activities; coaching; publication services; meditation training; personal development courses; education and training services relating to the provision of therapy, personal treatments, grooming, and hygiene services; organising of exhibitions, fora, competitions, symposia and shows; education, training and cultural services relating to therapy, hygiene, beauty care, medical analysis, pharmacy advice, the selection and use of perfumery, toiletries, cosmetic and pharmaceutical products, colour analysis and personal appearance; education, training and cultural services relating to aromatherapy, reflexology, spa services, beauty treatment services, make-up services, massage services, manicure services, pedicure services, cosmetic

treatment services, cosmetology, esthiology services, and aesthetics; instruction in body grooming; instruction in cosmetic beauty; teaching of beauty skills; educational seminars relating to beauty therapy; information, consultancy and advise services relating to the aforesaid services; providing online publications, not downloadable; providing on-line videos, not downloadable.

Class 42 Computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; application provider services (ASP); hosting multimedia content for others; hosting multimedia entertainment and educational content for others; information technology services for the pharmaceutical and healthcare industries.

BEAUTYLAB

015138341

Class 8 Hand tools and implements [hand-operated]; manicure and pedicure sets; razors; moustache and beard trimmers; nasal hair trimmers; eyelash separators; eyelash curlers; pliers; cuticle nippers; nail clippers; nail nippers; nail skin treatment trimmers; hair-removing tweezers; pliers; nail polishers; nail files; nail scissors; nail buffers; hygienic and beauty implements; hair styling appliances; curling tongs; curling irons; crimping irons; body art tools; emery files; flat irons; hair cutting and removal implements; hair clippers, cutters, trimmers and scissors; manicure and pedicure tools; cuticle nippers; tweezers; body art tools; cases for manicure and pedicure instruments; parts and fittings for all the aforesaid goods.

Class 10 Apparatus for the therapeutic stimulation of the body; apparatus for the therapeutic toning of the body; apparatus for the therapeutic stimulation of the muscles; bio therapeutic facial masks; body toner apparatus [therapeutic]; body massagers; face masks for medical use; gas laser apparatus for medical treatment; high frequency electromagnetic therapy apparatus; hot air therapeutic apparatus; hot therapy apparatus; hot therapy instruments; laser apparatus for therapeutic use; low frequency electric therapy apparatus; magnets for therapeutic use; medical skin abraders; medical therapy instruments; electric therapy apparatus; therapeutic apparatus incorporating massaging facilities; therapeutic devices for the removal of hair; therapeutic hosiery; visible light treatment instruments; water therapy apparatus for medical use; water treatment apparatus for medical use; medical skin enhancing apparatus; medical apparatus for the toning of the skin; medical apparatus for the toning of the body; apparatus and instruments for the rejuvenation of the skin; medical apparatus and instruments for the care of the skin; pads for medical use in applying a fluid to the skin; skin temperature indicators for medical use; medical skin abraders; ultrasound apparatus for medical purposes; ultrasound therapy apparatus;

apparatus for the treatment of cellulite; electrodes for use with medical apparatus and instruments; apparatus for muscle stimulation; apparatus for use in toning and exercising muscles; parts and fittings for all the aforesaid goods.

Class 38 Telecommunications services, namely electronic transmission of data, messages and information; broadcasting services, namely, uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications network; broadcasting services; webcasting services; providing online forums for communication on topics of general interest including cosmetics, beauty, beauty therapies and beauty products; providing online chat rooms and electronic bulletin boards; streaming of video material on the internet; streaming of audio material on the internet; providing access to computer, electronic and online databases; electronic communication services; transmission of messages, data and content via the Internet and other computer and communications networks; providing online forums, chat rooms, blogs, and list servers for the transmission of messages, comments and multimedia content among users; transmission of electronic media, multimedia content, videos, movies, pictures, images, text, photos, games, user-generated content, audio content, and information via the Internet and other computer and communications networks; providing online communications links which transfer web site users to other local and global web pages; facilitating access to third party web sites via a universal login; providing access to computer databases in the fields of social networking, social introduction and dating; electronic bulletin board services; providing access to non-downloadable software to enable sharing of multimedia content and comments among users; providing access to non-downloadable software to enable content providers to track multimedia content.

Class 41 Education; providing of training; entertainment; sporting and cultural activities; coaching; publication services; meditation training; personal development courses; education and training services relating to the provision of therapy, personal treatments, grooming, and hygiene services; organising of exhibitions, fora, competitions, symposia and shows; education, training and cultural services relating to therapy, hygiene, beauty care, medical analysis, pharmacy advice, the selection and use of perfumery, toiletries, cosmetic and pharmaceutical products, colour analysis and personal appearance; education, training and cultural services relating to aromatherapy, reflexology, spa services, beauty treatment services, make-up services, massage services, manicure services, pedicure services, cosmetic treatment services, cosmetology, esthiology services, and aesthetics; instruction in body grooming; information, consultancy and advise services relating to the aforesaid services; providing online journals.

Class 44 Therapeutic services; hygiene services; hygienic and beauty care for human beings or animals; medical analysis for the diagnosis and treatment of persons; pharmacy advice; beauty consultation services; beauty treatment services; beauty therapy treatments; colour analysis [beauticians' services]; personal appearance services; aromatherapy services; reflexology services; beauty salon services; spa services; beauty treatment services; make-up services; massage services; body and skin care services; beauty care services provided by a health spa; manicure services; pedicure services; cosmetic treatment services; cosmetology; esthiology services; aesthetics consultancy services; body waxing services for the human body; cosmetic body care services; cosmetic treatment services for the body, face and hair; information, consultancy and advise services relating to the aforesaid services.