

O/0469/23

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 3793325 BY
ILCI&CO. LIMITED
TO REGISTER AS A TRADE MARK (SERIES OF TWO):**

MAIA

NATURAL

MAIA NATURALS

IN CLASSES 3, 5, 24, 25, 29, 30, 31, 32 & 35

AND

**OPPOSITION THERETO
UNDER NO. 600002562 BY
AKINTUNDE ADEWALE AKINSOLA**

Background & Pleadings

1. ILCI&CO. Limited (“**the applicant**”) applied to register the series of marks shown on the front page of this decision in the United Kingdom. The application was filed on 28 May 2022 and was published on 24 June 2022. For the purposes of this opposition the relevant goods and services in the specification are:

Class 24: Household linens; Household linen; Linen (Household -); Linen for household purposes; Household linen, including face towels; Linens; Linen; Bed linen and table linen; Valence linen; Linen (Bed -); Linen cloth; Table linen; Linen [fabric]; Kitchen linen; Bed linen; Tick [linen]; Terry linen; Diapered linen; Linen (Diapered -); Bath linen; Infants' bed linen; Coasters [table linen]; Mats of linen; Woven linen fabrics; Canopies (bed linen); Kitchen and table linens; Crib bumpers [bed linen]; Cot bumpers [bed linen]; Textiles made of linen; Bath linen, except clothing; Textile napkins [table linen]; Linen for the bed; Bed linen and blankets; Household textiles; Textile smallwares [table linen]; Table linen of textile; Bed linen of paper; Drink coasters of table linen; Labels (Textile -) for identifying linen; Labels (Textile -) for marking linen; Household textile goods; Linen lining fabric for shoes; Table linen, not of paper; Household textile articles; Textile fabrics for making into linens; Household textile piece goods; Textiles; Towelling [textile]; Linings [textile]; Coated textiles; Labels (textile); Textile fabrics; Viscose textiles; Polyester textiles; Banners textile; Textile coasters; Textile napkins; Textile serviettes; Napery [textile]; Textile labels; Textile material; Towels [textile]; Textile fabric; Textiles and substitutes for textiles; Textile handkerchieves; Textile handkerchiefs; Textile tissues; Textile tablecloths; Material (Textile -); Textile goods, and substitutes for textile goods; Textiles for furnishings; Mural hangings [textile]; Towels of textile; Tablecloths of textile; Tapestries of textile; Towels [of textile]; Reinforced fabrics [textile]; Bedroom textile fabrics; Coasters of textile; Curtains of textile;

Non-woven textiles; Curtain holders (Textile -); Quilts of textile; Streamers of textile; Friezes of textile; Towels of textiles; Adhesive labels (Textile -); Kitchen towels [textile]; Textile printers' blankets; Waterproof textile fabrics; Doilies of textile; Napery of textile; Textile piece goods; Textiles for upholstery; Textile filter materials; Tablemats of textile; Labels of textile; Textile exercise towels; Filter fibers [textile].

Class 25: Linen clothing; Body linen [garments]; Linen (Body -) [garments]; Clothes; Clothing; Layettees [clothing]; Jackets [clothing]; Kerchiefs [clothing]; Maternity clothing; Thermal clothing; Belts [clothing]; Capes (clothing); Veils [clothing]; Wraps [clothing]; Silk clothing; Woolen clothing; Ladies' clothing; Tops [clothing]; Knitted clothing; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Waterproof clothing; Girls' clothing; Knitwear [clothing]; Casual clothing; Denims [clothing]; Babies' clothing; Cashmere clothing; Women's clothing; Bodies [clothing]; Embroidered clothing.

Class 35: Retail services relating to food; Unmanned retail store services relating to food; Retail store services in the field of clothing; Online retail store services in relation to clothing; Retail services in relation to cleaning articles; Online retail store services relating to cosmetic and beauty products; Online retail store services relating to clothing; Unmanned retail store services relating to drink; Administration of the business affairs of retail stores; Mail order retail services for cosmetics; Online retail services relating to cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics.

2. Akintunde Adewale Akinsola (“**the opponent**”) opposes (using the Fast Track provisions) the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent is the proprietor of the UK registration number 03713323 for the following series of marks:

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3. The opponent's series of marks was filed on 22 October 2021 and registered on 11 March 2022 for the following goods:

Class 24: Towels; bath towels; face towels; flannels.

Class 25: Bath robes.

4. For the purposes of this opposition, the opponent relies on all goods in Classes 24 and 25 as covered by his earlier series of marks.
5. For ease of reference, I will refer to the series of contested marks as the applicant's 'mark' and the opponent's 'mark', unless it becomes necessary to differentiate between the marks which comprise the series.
6. Under Section 6(1) of the Act, the opponent's trade mark clearly qualifies as an earlier trade mark. Further, as protection of the opponent's earlier mark was conferred less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.
7. The opponent in his notice of opposition claims that some of the competing goods and services are identical and others highly similar. In addition, the opponent asserts that the competing marks are visually similar to a high degree, aurally to a medium degree, and conceptually to a low degree.
8. The applicant filed a defence and counterstatement asserting that:

"6. The Opponent is relying on the entirety of its Class 24 and 25 for the basis of this Opposition. The Defendant on the other hand is opposing this claim and kindly requests that UKIPO only take the above mentioned "Earlier Goods" into consideration, and not the

entirety of its Classes. And under that assumption, the defendant would like to emphasize that out of these two classes the defendant has only “Towels” and “Face Towels” in common, and these only in class 24. None of the other Goods the Applicant (Defendant) has filed for have been filed by the Opponent, and we believe they should therefore not even be considered part of these proceedings.”

In relation to the competing marks, the applicant contends that:

“12. [...] the visual differences here weigh significantly in the Defendant’s favour. It would be quite difficult to defend the position that the consumer could mistake one Mark for the other from a visual standpoint whether we take the Mark’s words, their logo or both into consideration.

13. [...] the two marks are aurally and phonetically dissimilar enough that the average consumer would have no reason to mistake one mark for the other in the real world.

14. [...] the two marks are very highly and unmistakably distinguishable from a conceptual standpoint: [...]”

9. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20 (4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

10. The net effect of these changes is to require the parties to seek leave in order to file evidence in Fast Track oppositions. No leave was sought to file any evidence in respect of these proceedings.

11. Rule 62 (5) (as amended) states that arguments in Fast Track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
12. A hearing was neither requested nor was it considered necessary. Only the opponent filed written submissions in lieu of a hearing, which will not be summarised but will be referred to as and where appropriate during this decision. This decision has been taken following a careful consideration of the papers.
13. In these proceedings, the opponent is represented by ipconsult and the applicant is unrepresented.
14. 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 Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

Decision

Section 5(2)(b)

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

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

[...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

16. The principles, considered in this opposition, stem from the decisions of the European 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 BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of Goods and Services

17. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (CJEU) stated that:

“23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or

services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or complementary.”

18. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

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

19. The General Court (GC) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the

trade mark application are included in a more general category designated by the earlier mark”.

20. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] 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.”

21. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

“[...] 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.”

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

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

23. The competing goods and services to be compared are shown in the following table:

Opponent’s Goods	Applicant’s Goods & Services
<p>Class 24: Towels; bath towels; face towels; flannels.</p>	<p>Class 24: Household linens; Household linen; Linen (Household -); Linen for household purposes; Household linen, including face towels; Linens; Linen; Bed linen and table linen; Valence linen; Linen (Bed -); Linen cloth; Table linen; Linen [fabric]; Kitchen linen; Bed linen; Tick [linen]; Terry linen; Diapered linen; Linen (Diapered -); Bath linen; Infants' bed linen; Coasters [table linen]; Mats of linen; Woven linen fabrics; Canopies (bed linen); Kitchen and table linens; Crib bumpers [bed linen]; Cot bumpers [bed linen]; Textiles made of linen; Bath linen, except clothing; Textile napkins [table linen]; Linen for the bed; Bed linen and blankets; Household textiles; Textile smallwares [table linen]; Table linen of textile; Bed linen of paper; Drink coasters of table linen; Labels (Textile -) for identifying linen; Labels (Textile -) for marking linen; Household textile goods; Linen lining fabric for shoes; Table linen, not of paper; Household textile articles; Textile fabrics for making into linens; Household textile piece goods; Textiles; Towelling [textile]; Linings [textile]; Coated textiles; Labels (textile); Textile fabrics; Viscose textiles; Polyester textiles; Banners textile; Textile coasters; Textile</p>

	<p>napkins; Textile serviettes; Napery [textile]; Textile labels; Textile material; Towels [textile]; Textile fabric; Textiles and substitutes for textiles; Textile handkerchieves; Textile handkerchiefs; Textile tissues; Textile tablecloths; Material (Textile -); Textile goods, and substitutes for textile goods; Textiles for furnishings; Mural hangings [textile]; Towels of textile; Tablecloths of textile; Tapestries of textile; Towels [of textile]; Reinforced fabrics [textile]; Bedroom textile fabrics; Coasters of textile; Curtains of textile; Non-woven textiles; Curtain holders (Textile -); Quilts of textile; Streamers of textile; Friezes of textile; Towels of textiles; Adhesive labels (Textile -); Kitchen towels [textile]; Textile printers' blankets; Waterproof textile fabrics; Doilies of textile; Napery of textile; Textile piece goods; Textiles for upholstery; Textile filter materials; Tablemats of textile; Labels of textile; Textile exercise towels; Filter fibers [textile].</p>
<p>Class 25: Bath robes.</p>	<p>Class 25: Linen clothing; Body linen [garments]; Linen (Body -) [garments]; Clothes; Clothing; Layettes [clothing]; Jackets [clothing]; Kerchiefs [clothing]; Maternity clothing; Thermal clothing; Belts [clothing]; Capes (clothing); Veils [clothing]; Wraps [clothing]; Silk clothing; Woolen clothing; Ladies' clothing; Tops [clothing]; Knitted clothing; Hoods [clothing]; Leisure clothing; Infant clothing; Children's clothing; Childrens' clothing; Waterproof clothing; Girls' clothing; Knitwear [clothing]; Casual clothing; Denims [clothing]; Babies' clothing; Cashmere clothing; Women's clothing; Bodies [clothing]; Embroidered clothing.</p>

	<p>Class 35: Retail services relating to food; Unmanned retail store services relating to food; Retail store services in the field of clothing; Online retail store services in relation to clothing; Retail services in relation to cleaning articles; Online retail store services relating to cosmetic and beauty products; Online retail store services relating to clothing; Unmanned retail store services relating to drink; Administration of the business affairs of retail stores; Mail order retail services for cosmetics; Online retail services relating to cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics.</p>
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24. The opponent submits that:

“17. It is submitted that the Contested Goods and Services are highly similar to, the Earlier Goods. They are similar in nature, so are their end users and their method of use and that they are in competition [...]

18. The nature of the Contested Goods and Services and the Earlier Goods have a highly similar nature, with similar end users, method of use and are in competition. In fact, both applicant and opponent are offering the identical good/product which is “towels”. As to the other remaining goods, we submit that there is strong similarity under Class 24 because the products are usually sold together or next to each other in the homeware section in a retail store such as a supermarket or departmental store. The purpose of textiles, linen, towels and fabrics are to keep the subject wearer dry and warm.

19. It could also be argued that the Contested Goods under Class 25 are similar to the Earlier Goods. There is high similarity because the earlier goods namely "bath robes", can be easily found or sold

together with "linen clothing; body linen...." in a retail location. The buying process for Classes 24 and 25 being primarily a visual one, consumers are likely to come across both types of goods in the same physical location. Additionally, consumers will associate the contested services under class 35 and the earlier goods for classes 24 and 25 as the manner of purchase for the earlier goods is similar to the contested services.

20. As for Class 35, the retail of clothing, cleaning articles, cosmetics and subscription boxes containing cosmetics, are likely to be offered through the same channels and in the same retail locations such as spas, similar to the Earlier Mark's "towels, bath towels, face towels, flannel, bath robes".

25. Although the applicant in its counterstatement describes how the competing goods are traded, for example, that the contested goods are ecologically and organic certified not competing with the opponent's goods, this has no bearing on my decision. This is because I must consider the matter notionally based on the terms the parties have registered or seek to register. In addition, the applicant admits similarity for the terms "towels" and "face towels" in Class 24 in the competing specifications, denying any similarity for the rest of the terms.

Class 24

Towelling [textile]; Towels [textile]; Towels of textile; Towels [of textile]

26. The contested terms are identical to the earlier term "Towels", albeit they are expressed slightly differently.

Kitchen towels [textile]; Textile exercise towels

27. The earlier term "Towels" is a broad term which encompasses the contested goods in the same Class. In this regard, and based on the *Meric* principle, the respective goods are identical.

Household linen, including face towels; Household linen; Linen (Household-); Linen cloth; Linen for household purposes; Household textile articles; Household textile goods; Household textile piece goods; Household textiles; Bath linen; Bath linen, except clothing

28. The contested terms are broad terms that are largely household items, such as towels, sheets, pillowcases. In this respect, I consider that they can encompass the earlier goods, i.e. “*towels; bath towels; face towels; flannels*”. Therefore, I find the respective goods to be *Merici* identical. If I am wrong, they are highly similar as they coincide in nature, purpose, users, trade channels, method of use as well as they can be in competition.

Table linen; Table linen of textile; Table linen, not of paper; Tablecloths of textile; Tablemats of textile; Textile smallwares [table linen]; Textile tablecloths; Textile tissues; Textile napkins [table linen]; Textile napkins; Coasters [table linen]; Coasters of textile; Drink coasters of table linen; Textile coasters; Doilies of textile

29. The contested goods are fabric products that are typically used on dining tables, such as tablecloths and placemats. The contested goods could share the same nature with the earlier terms “*towels; bath towels; face towels; flannels*” and trade channels. However, they differ in method of use and purpose, as the contested items are meant to protect the table from scratches and stains, whereas the earlier goods are used for drying or wiping. Although the users would only overlap to the extent that they include those purchasing textile items for their home, it is my view that this would be a superficial overlap. Further, I do not consider that there is any element of competition or complementarity. I find the goods to be similar to a low degree.

Kitchen and table linens; Kitchen linen

30. In terms of the contested terms, these could include tea towels. Thus, I consider that the similarity is one step closer with the earlier terms as

shown in the preceding paragraph. This is because the competing goods may share the same nature, purpose, users, trade channels and method of use as the opponent's "towels". Also, there might be some degree of competition where the consumers may consider buying one over the other. Therefore, I find that they are similar to a high degree.

Curtain holders (Textile -); Curtains of textile; Friezes of textile; Canopies (bed linen); Cot bumpers [bed linen]; Crib bumpers [bed linen]; Mats of linen; Bed linen and blankets; Bed linen; Bed linen of paper; Bedroom textile fabrics; Infants' bed linen; Linen (Bed -); Linen for the bed; Napery [textile]; Napery of textile; Tapestries of textile

31. The contested goods consist of a range of household items that may share the same nature with the opponent's "towels; bath towels; face towels; flannels". I consider that the overlap in users is superficial as it is relevant only to the extent that they include those buying textile goods for their home, albeit for different purposes. They share trade channels as the competing goods will be sold in the same homeware stores, and same aisles/locations in supermarkets/department stores. However, they differ in nature, purpose and method of use. In addition, I do not consider that there is any degree of competition or complementarity. I find the respective goods to be similar to a low degree.

Non-woven textiles; Polyester textiles; Quilts of textile; Linen; Linens; Linen (Diapered -); Linen [fabric]; Terry Linen; Coated textiles; Reinforced fabrics [textile]; Material (Textile-); Linings [textile]; Textile fabric; Textile fabrics; Textile fabrics for making into linens; Textile filter materials; Textile goods, and substitutes for textile goods; Textile material; Textile piece goods; Textiles; Textiles and substitutes for textiles; Textiles for furnishings; Textiles for upholstery; Textiles made of linen; Tick [linen]; Valence linen; Viscose textiles; Waterproof textile fabrics; Woven linen fabrics; Diapered linen; Napery [textile]; Napery of textile; Filter fibers [textile]; Streamers of textile

32. The contested terms are various raw materials used to make a range of items, including clothing and household articles. The opponent terms “*towels; bath towels; face towels; flannels*” are the closest comparable terms. Although they may coincide in nature, they may differ in purpose, users, and trade channels. This is because the contested goods are all fabrics that can be used to manufacture items for household purposes and/or interior decoration. I cannot exclude entirely the possibility that there could be an overlap in users, especially when consumers purchase raw materials to create, for example, their own items. However, the trade channels will be different as the contested goods will not be sold in the same department stores and outlets as the earlier goods, and they are not usually manufactured by the same undertaking. In this respect, they are not in competition nor complementary. I find the goods to be similar to a low degree.

Adhesive labels (Textile -); Labels (Textile -) for identifying linen; Labels (Textile -) for marking linen; Labels (textile); Labels of textile; Textile labels

33. The contested goods are intended to provide important information about the garment to the consumer, such as the fibre content. I can see no meaningful similarity in terms of the nature, intended purpose, or method of use nor are the goods at issue in competition with the opponent’s goods in Class 24. Even though the contested goods could be part of the

opponent's Class 24 and 25 goods, such as towel or clothing labels, they will not be considered to be complementary "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". Thus, I find them to be dissimilar.

Linen lining fabric for shoes; Textile serviettes; Mural hangings [textile]; Banners textile

34. Although the contested goods may be similar in nature with the opponent's goods in Class 24, I consider this to be an insufficient factor to find similarity. Further, there is no overlap in purpose, method of use or channels of trade, with no element of competition or complementarity. Although there is the potential for the users to coincide at a very general level, this is not sufficient to create overall similarity between the competing goods. I consider the respective goods to be dissimilar.

Class 25

Linen clothing; Body linen [garments]; Linen (Body -) [garments]; Clothes; Clothing; Jackets [clothing]; Kerchiefs [clothing]; Thermal clothing; Belts [clothing]; Capes (clothing); Veils [clothing]; Wraps [clothing]; Silk clothing; Woolen clothing; Ladies' clothing; Tops [clothing]; Knitted clothing; Hoods [clothing]; Leisure clothing; Maternity clothing; Waterproof clothing; Girls' clothing; Knitwear [clothing]; Casual clothing; Denims [clothing]; Cashmere clothing; Women's clothing; Bodies [clothing]; Embroidered clothing

35. The contested goods are all various items of outerwear clothing. These are not identical to any of the opponent's goods with the closest comparable earlier term being "bath robes" in the same Class. The competing goods may coincide in general nature and intended purpose (to clothe), method of use, users and trade channels. However, I note that even if such goods are offered for sale in the same department stores or large clothing stores, they are not likely to be offered for sale in the same section or close to one

another. Consequently, there is no element of competition. I consider that the competing goods are similar to at least a low degree.

Layettes [clothing]; Infant clothing; Children's clothing; Childrens' clothing; Babies' clothing

36. The contested goods are clothing items for infants, babies, and children. The opponent's "*bath robes*" goods may also be available for the same age range as the applicant's products. Following the same approach in the preceding paragraph, the competing goods are similar to at least a low degree.
37. For completeness, I will also provide a comparison between the earlier goods in Class 24, namely "*towels; bath towels; face towels; flannels*" and the above contested goods in Class 25. The earlier goods are all items for household use. Although the respective goods could be made from the same materials, it is superficial to find similarity. This is because the contested goods fulfil different purposes from the earlier goods. In more detail, the earlier goods in Class 25 are intended to be worn to cover the human body either for its protection or for aesthetic purposes. In contrast, the contested goods are all fabrics that can be used for drying or wiping purposes. The trade channels will be different as the contested goods will not be sold in the same stores and outlets as the earlier goods in Class 25, and they are not usually manufactured by the same undertaking. In this respect, they are not in competition nor complementary. I find the goods to be dissimilar.

Class 35

38. Before conducting the assessment of the respective services and goods, I will set out some further applicable case law.
39. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose, and method of use to goods, retail services for particular goods may be complementary

to those goods, and distributed through the same trade channels, and therefore similar to a degree.

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

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

41. However, on the basis of the European Courts’ judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v OHIM*, Case T-105/05, at paragraphs 30 to 35 of the judgment, upheld on appeal in *Waterford Wedgewood Plc v Assembled Investments (Proprietary) Ltd*, Case C-398/07P, Mr Hobbs concluded that:

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

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

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

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

Retail store services in the field of clothing; Online retail store services in relation to clothing; Online retail store services relating to clothing

42. The contested services in Class 35 are provided with the aim of retailing clothing items. The nature of the contested services here differs from the goods in Class 25 in the earlier specification. The former ones are offered by a retailer for the sale and purchase of goods by the end users, whereas the latter ones are the physical products as such. Moreover, the method of use and purpose differentiates between the goods and the services in question. However, the ordinary method of retailing such goods creates a link where consumers are likely to believe that the same commercial undertaking could offer both the goods and the retail services, based on the confines of the case law mentioned above. I also find that the complementarity in this case is sufficiently pronounced. Taking all these factors into consideration, there is a medium degree of similarity between the respective goods and services.

Retail services in relation to cleaning articles

43. Following the same approach in the preceding paragraph, the contested retail services relate to cleaning articles. The nature of the contested services here differs from the goods in Class 24 in the earlier specification. The nature, purpose, and method of use of the competing goods and services differentiates between the goods and the services in question. However, the consumers are likely to believe that the same commercial undertaking could offer both the goods and the retail services. Further, the complementarity in this case is sufficiently pronounced. Taking all these factors into consideration, there is a medium degree of similarity.

Retail services relating to food; Unmanned retail store services relating to food; Online retail store services relating to cosmetic and beauty products; Unmanned retail store services relating to drink; Administration of the business affairs of retail stores; Mail order retail services for cosmetics; Online retail services relating to cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics

44. There is no obvious similarity between the contested services and the goods in the earlier specification. The nature, purpose, users, method of use and trade channels differ. Also, there is no degree of complementarity and competition. I find them to be dissimilar.
45. The likelihood of confusion does not arise in relation to the application's goods and services in Classes 24 and 35 which are dissimilar to the goods of the earlier mark.¹ **The opposition cannot succeed against dissimilar goods and services and, therefore, is dismissed insofar as it concerns the following terms:**

¹ Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

Class 24: Adhesive labels (Textile-); Banners textile; Labels (Textile-) for identifying linen; Labels (Textile-) for marking linen; Labels (textile); Labels of textile; Textile labels; Linen lining fabric for shoes; Textile serviettes; Mural hangings [textile].

Class 35: Retail services relating to food; Unmanned retail store services relating to food; Online retail store services relating to cosmetic and beauty products; Unmanned retail store services relating to drink; Administration of the business affairs of retail stores; Mail order retail services for cosmetics; Online retail services relating to cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics.

Average Consumer and the Purchasing Act

46. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

“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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”

47. The goods at issue will be purchased by members of the general public. Such goods are usually offered for sale in stores, such as retail outlets,

brochures and catalogues, and online. In retail premises, the goods will be displayed on shelves and racks, where they will be viewed and self-selected by consumers. Similarly, for online stores, consumers will select the goods relying on the images displayed on the relevant web pages. Nevertheless, the selection process may involve aural considerations, as advice may be sought from a sales assistant or representative. Therefore, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment. Even for those at the inexpensive end of the scale, the average consumer will examine the products to ensure that they select the correct type, size, material, quality, and aesthetic appearance of, for example, clothing and household items. Thus, the average consumer will pay an average degree of attention.

48. As to the retail services in Class 35, the selection process will be based on factors such as availability of the desired product range, price, quantity, and quality. Primarily, the average consumer's encounter with the given services will be on a visual level, such as signage on premises, promotional material, and website use. The process, therefore, will be primarily visual, but word of mouth or recommendations may also play a role. The degree of attention paid to the selection of a retailer will be average, taking into account commercial considerations.


Comparison of Trade Marks

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

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

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

51. The marks to be compared are:

Opponent's Series of Two Mark	Applicant's Series of Two Mark
<p style="text-align: center;">MAIA & I MAIA AND I</p>	<p style="text-align: center;">  MAIA NATURALS </p>

Overall Impression

52. The applicant's mark is a series of two. The first consists of the words "MAIA" and "NATURAL", with the former word appearing at the top, more prominent than the latter and in a bold font and standard typeface. Because of its primary position and font size, the word "MAIA" will be the dominant element of the mark, having the greatest weight in the overall impression, whilst the word "NATURAL" will play a secondary role due to the descriptive qualities, as explained below, in relation to the goods. The

second mark in the series consists of the words “MAIA NATURALS”. Registration of a word mark protects the word itself.² Again, in this instance, the first word element, “MAIA”, will be the dominant element having the greatest weight in the overall impression, with the second word element playing a secondary role for the same reasons advanced above.

53. The earlier mark is a series of two in word-only format. Each mark within the series comprises the words “MAIA & I” and “MAIA AND I”. Again, here, registration of a word mark protects the words themselves.³ The overall impression of the earlier mark lies in the words themselves.

Visual Comparison

54. Bearing in mind, as a rule of thumb, that the beginnings of words tend to have more impact than the ends,⁴ the competing word marks in the series share the first common word element “MAIA”. However, there are points of visual differences. More specifically, the marks differ in the word elements “NATURAL/NATURALS” and “AND/& I”. Considering all the factors, including the overall impression of the marks, I find them to be visually similar to a medium degree.

Aural Comparison

55. The average consumer would pronounce the contested mark as “MAI-A-NA-CHUH-RUHL/NA-CHUH-RUHLS” and the earlier mark as “MAI-A-AND-IE”. There are differences in the length and syllables of the marks. The earlier mark is four syllables long, whereas the contested mark is five. In more detail, the competing marks share the same first two syllables “MAI-A” but differ in the remaining syllables. Taking into account the above

² See *LA Superquímica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

³ *Ibid.*

⁴ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

factors and the overall impressions, I consider that the marks are aurally similar to between a low to medium degree.

Conceptual Comparison

56. In his statement of grounds, the opponent claims that:

“14. [...] Conceptually the marks are similar to a low degree. MAIA has no established dictionary meaning, but NATURALS would evoke a connection of product comprising of natural ingredients. The Earlier Mark would be viewed as perhaps referring to a female’s name and the consumer themselves by the ‘AND I / & I’ textual element.”

57. In its counterstatement, the applicant states that:

“The second word in the applicant’s mark, namely “Natural”, has a true and descriptive meaning and a deep-rooted reason it was chosen to be matched with the first word “Maia”: The main reason we applied for our Trade Mark and Brand under “Maia Natural” is that we are an exclusively Natural, Ecological, Organic, and sustainable brand. Maia Natural is an Eco-brand and all its products are and will be ecological, sustainable, recycled and/or recyclable, Biodegradable, Plant Based, Certified Organic, free of all harmful chemicals, Vegan Certified, with no Hormonal Disruptors, No GMOs and no Synthetic Fragrances.”

58. The competing marks share the common word element “MAIA”. In the absence of evidence, I am unwilling to conclude that the entirety of the relevant public in the UK will see “MAIA” as a name.⁵ In this regard, some consumers may recognise “MAIA” as a name, albeit an uncommon one. However, for some consumers, it will be perceived as an invented word with no particular meaning. Further, the competing marks contain the diverging dictionary and common words “NATURAL/NATURALS” and “AND/& I”, which will be readily understood. I agree with the applicant and

⁵ See *Chorkee Ltd v Cherokee Inc.*, Case BL O/048/08.

consider that the average consumer will recognise and perceive the word elements “NATURAL/NATURALS” in the contested mark as descriptive, indicating that the goods are made of natural materials. As to the earlier mark, the word elements “AND& I” may be seen as a reference to the consumers themselves. Overall, taking into account the above factors, there is no conceptual similarity for those consumers who will not perceive “MAIA” as name, and a medium degree of conceptual similarity for those who will.

Distinctive Character of the Earlier Trade Mark

59. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

60. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
61. The opponent has not shown use of his mark and, thus, he cannot benefit from any enhanced distinctiveness. In this respect, I have only the inherent distinctiveness of the earlier mark to consider. The earlier mark consists of the words “MAIA AND I/MAIA & I”. As outlined earlier in this decision, the first word element in the earlier mark could be perceived either as a name, albeit an uncommon one, or as an invented word. In any event, I do not consider that any of the word elements will have a suggestive or allusive connotation. Thus, I consider that the earlier mark is inherently distinctive to slightly higher than a medium degree.

Likelihood of Confusion

62. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.⁶ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater may be the likelihood of confusion. I must also keep in mind that the average consumer rarely has the

⁶ See *Canon Kabushiki Kaisha*, paragraph 17.

opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.⁷

63. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.
64. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, on the court's earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

⁷ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).”

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

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

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

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

66. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C., (as he then was) sitting as the Appointed Person, 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).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.⁸

67. Earlier in this decision I have concluded that:

- the goods at issue range from identical to dissimilar;
- the average consumer for the goods at issue will be a member of the general public, and the selection process is predominantly visual without discounting aural considerations. The average consumer is likely to examine the products to ensure that they select the correct type, quality, size and/or aesthetic appearance. The level of attention paid will be average. As for the retail services in Class 35, the average consumer will be the general public, with the selection process conducted primarily at a visual level without dismissing aural considerations, and the degree of attention will be average;
- the competing marks are visually similar to a medium degree, aurally similar between a low to medium degree, and there is no conceptual similarity for those consumers who will not perceive “MAIA” as a name, and a medium degree of conceptual similarity for those who will;
- the earlier mark has slightly higher than a medium degree of inherent distinctiveness.

68. Taking into account the above factors and considering the identical goods and services in play, there is no likelihood of direct confusion. Notwithstanding the doctrine of imperfect recollection, the differences are sufficient to enable the average consumer to distinguish the respective marks. Even though the competing marks share the common and distinctive element, “MAIA”, the average consumer will recognise and remember the differences arising from the rest of the dictionary and well-

⁸ See *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

known word elements present in the competing marks, i.e “AND/& I” and “NATURAL/NATURALS”. Thus, the various visual and aural differences between the competing marks previously identified are, in my view, sufficient, and, as a result, the marks will not be directly confused.

69. Nevertheless, I find that there is a likelihood of indirect confusion for the respective identical goods. It is my view that the contested series of marks would be likely perceived as a variation on the earlier series of marks, “MAIA AND/& I”, such as a co- or sub-brand. In particular, while the average consumer will recognise the differences between the marks, they will identify the common word element shared in the respective marks. Given the identity of the goods in question, it is likely to create the impression that the goods sold under the contested mark originate from the same or a linked undertaking as those provided under the earlier mark. This is because the common word element “MAIA”, which is the first (or the more prominent) verbal and visual element in the competing marks, will have an independent distinctive role within the competing marks.⁹ Further, the word element “NATURAL/ NATURALS” will be seen simply as descriptive of the goods without indicating origin. Therefore, I find that the average consumer would assume a commercial association between the parties, believing that the respective goods come from the same or economically linked undertakings. As a result, I find there is a likelihood of indirect confusion.

70. In relation to the group of consumers to which the word element “MAIA” is known, this would only further increase the likelihood of confusion. This is because the conceptual similarity, emanating from the dominant word element, will allow consumers to establish a conceptual link between the marks.

⁹ See *Whyte and Mackay Ltd.*

71. The above findings extend to the goods and services I have found to be similar at any degree.

Outcome

72. Part of the opposition under Section 5(2)(b) **succeeds and, subject to an appeal against this decision, the application will be refused for the following goods and services:**

Class 24: Towelling [textile]; Towels [textile]; Towels of textile; Towels [of textile]; Kitchen towels [textile]; Textile exercise towels; Household linen, including face towels; Household linen; Linen (Household-); Linen cloth; Linen for household purposes; Household textile articles; Household textile goods; Household textile piece goods; Household textiles; Bath linen; Bath linen, except clothing; Table linen; Table linen of textile; Table linen, not of paper; Tablecloths of textile; Tablemats of textile; Textile smallwares [table linen]; Textile tablecloths; Textile tissues; Kitchen and table linens; Kitchen linen; Textile napkins [table linen]; Textile napkins; Coasters [table linen]; Coasters of textile; Drink coasters of table linen; Textile coasters; Curtain holders (Textile -); Curtains of textile; Doilies of textile; Friezes of textile; Canopies (bed linen); Cot bumpers [bed linen]; Crib bumpers [bed linen]; Mats of linen; Bed linen and blankets; Bed linen; Bed linen of paper; Bedroom textile fabrics; Infants' bed linen; Linen (Bed -); Linen for the bed; Napery [textile]; Napery of textile; Tapestries of textile; Non-woven textiles; Polyester textiles; Quilts of textile; Linen; Linens; Linen (Diapered -); Linen [fabric]; Coated textiles; Reinforced fabrics [textile]; Terry linen; Material (Textile-); Linings [textile]; Textile fabric; Textile fabrics; Textile fabrics for making into linens; Textile filter materials; Textile goods, and substitutes for textile goods; Textile material; Textile piece goods; Textiles; Textiles and substitutes for textiles; Textiles for furnishings; Textiles for upholstery; Textiles made of linen; Tick [linen]; Valence linen; Viscose textiles; Waterproof textile fabrics; Woven linen fabrics;

Diapered linen; Napery [textile]; Napery of textile; Filter fibers [textile]; Streamers of textile.

Class 25: Class 25: Linen clothing; Body linen [garments]; Linen (Body -) [garments]; Clothes; Clothing; Jackets [clothing]; Kerchiefs [clothing]; Thermal clothing; Belts [clothing]; Capes (clothing); Veils [clothing]; Wraps [clothing]; Silk clothing; Woolen clothing; Ladies' clothing; Tops [clothing]; Knitted clothing; Hoods [clothing]; Leisure clothing; Maternity clothing; Waterproof clothing; Girls' clothing; Knitwear [clothing]; Casual clothing; Denims [clothing]; Cashmere clothing; Women's clothing; Bodies [clothing]; Embroidered clothing; Layettees [clothing]; Infant clothing; Children's clothing; Childrens' clothing; Babies' clothing.

Class 35: Retail store services in the field of clothing; Online retail store services in relation to clothing; Retail services in relation to cleaning articles; Online retail store services relating to clothing.

73. Part of the opposition **fails, and the application may, subject to appeal, proceed to registration for the following goods and services:**

Class 24: Adhesive labels (Textile -); Banners textile; Labels (Textile -) for identifying linen; Labels (Textile -) for marking linen; Labels (textile); Labels of textile; Textile labels; Linen lining fabric for shoes; Textile serviettes; Mural hangings [textile].

Class 35: Retail services relating to food; Unmanned retail store services relating to food; Online retail store services relating to cosmetic and beauty products; Unmanned retail store services relating to drink; Administration of the business affairs of retail stores; Mail order retail services for cosmetics; Online retail services relating to cosmetics; Retail services connected with the sale of subscription boxes containing cosmetics.

Costs

74. In terms of costs, whilst both parties have achieved a measure of success, proportionately, the opponent has been significantly more successful than the applicant. Awards of costs in fast-track opposition proceedings are governed by Tribunal Practice Notice 2 of 2016. I award costs to the opponent on the following basis:

Filing a notice of opposition	£200
Opposition fee	£100
Total	£300

75. I, therefore, order ILCI&CO. Limited to pay Akintunde Adewale Akinsola the sum of £300. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 18th day of May 2023

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General