

O/0608/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003827680  
BY MEMİŐOĐLU TARIM ÜRÜNLERİ TİCARET LİMİTED ŐİRKETİ  
TO REGISTER

**TAT**

AS A TRADE MARK IN CLASS 35

AND

IN THE MATTER OF THE OPPOSITION THERETO  
UNDER NO. 439516 BY  
TAT GIDA SANAYI ANONİM SİRKETİ

## BACKGROUND AND PLEADINGS

1. On 8 September 2022, MEMİŞOĞLU TARIM ÜRÜNLERİ TİCARET LİMİTED ŞİRKETİ (“the applicant”) applied to register the trade mark shown on the cover of this decision (“the applicant’s mark”) in the UK for the services listed in the **Annex 1** of this decision.
2. The applicant’s mark was published for opposition purposes on 2 December 2022 and, on 2 March 2023, it was opposed by TAT GIDA SANAYI ANONİM SİRKETİ (“the opponent”). The opposition is based on sections 5(2)(b) and 3(6) of the Trade Marks Act 1994 (“the Act”).<sup>1</sup> Under the section 3(6) ground, the opponent opposes all of the services applied for. However, under the section 5(2) grounds, the services against which this opposition is based are as follows:

Class 35: Provision of an online marketplace for buyers and sellers of goods and services; import-export agencies; auctioneering; the bringing together, for the benefit of others, of a variety of goods, namely, agriculture, horticulture and forestry, colorants for food, machines and robotic mechanisms (machines) for processing cereals, fruits, vegetables and food, beverage preparation machines, electromechanical, beverage processing, machines, electric kitchen machines for chopping, grinding, crushing, mixing and mincing foodstuff, forks, spoons, knives and non-electric cutters, slicers, peelers for kitchen use, including those made of precious metals, installations and apparatus for cooking, drying and boiling, cookers, electric cooking pots, meat, fish, poultry and game, processed meat products, dried pulses, soups, bouillon, processed olives, olive paste, milk and milk products, butter, edible oils, dried, preserved, frozen, cooked, smoked or salted fruits and vegetables, tomato paste, prepared nuts and dried fruits

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<sup>1</sup> In addition, the opponent initially relied upon sections 5(2)(a) and 5(3) of the Act. However, by way of written observations of the opponent, it was confirmed that it was no longer relying on the marks that are subject to proof of use (more on this below) and neither was it pursuing the 5(3) grounds.

as snacks, hazelnut spreads and peanut butter, tahini (sesame seed paste), eggs and powdered eggs, potato chips, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages, pasta, stuffed dumplings, noodles, pastries and bakery products based on flour, desserts based on flour and chocolate, bread, pasties, pita, sandwiches, pies, cakes, desserts based on dough coated with syrup, puddings, custard, rice pudding, honey, bee glue for human consumption, propolis for food purposes, condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce, yeast, baking powder, flour, semolina, starch for food, sugar, cube sugar, powdered sugar, tea, iced tea, confectionery, chocolate, biscuits, crackers, wafers, chewing gums, ice-cream, edible ices, salt, cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice, molasses for food, agricultural and horticultural products, seeds, forestry products, live animals, fertilized eggs for hatching, plants, dried plants for decoration, fresh garden herbs, dried garden herbs for decoration, animal foodstuffs, malt not for human consumption, cat litter and litter for small animals, beers, preparations for making beer, mineral water, spring water, table water, soda water, fruit and vegetable juices, fruit and vegetable concentrates and extracts for making beverages, non-alcoholic soft drinks, energy drinks, protein-enriched sports beverages, alcoholic beverages (except beers), wines, whisky, liqueurs, alcoholic cocktails, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

3. While it initially relied on three earlier marks, the opponent confirmed by way of written observations and submissions in lieu of a hearing that it would only proceed to rely on the following mark under its section 5(2)(b) ground:



UK registration no. 3791056

Filing date 23 May 2022; registration date 19 May 2023

Relying on all goods, namely:

Class 29: Fruit and vegetables in brine or cooked; jams; gherkins, olives, meat paste, liver sausage, beef sausage as preserves; paprika puree; sausage, salami; yoghurt, butter, margarine, cheese; poultry, fresh or frozen; edible oils, edible fats; dried pulses, namely beans, peas, lentils.

(“the opponent’s mark”).

4. Under the section 5(2)(b) ground, the opponent argues that there exists a likelihood of confusion on the basis that the marks at issue are either identical or highly similar and that the goods and services at issue are similar.
5. The opponent’s mark qualifies as an “earlier trade mark” for the purposes of this decision since it was applied for at an earlier date than the filing date of the applicant’s mark.<sup>2</sup>
6. Under its section 3(6) ground, the opponent claims that the applicant has no *bona fide* intention to use the mark in respect of any of the services applied for. The opponent seeks to rely on the fact that the applicant sought to file an opposition

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<sup>2</sup> See Section 6(1)(a) of the Act.

against its second mark. Further, the opponent claims that the applicant only trades in dried legumes, rice and bulgar and does not provide any of the services applied for. As a result, by not seeking to register its mark for those goods, the applicant has no intention to use its mark.

7. The applicant filed a counterstatement setting out that while the marks at issue may be similar,<sup>3</sup> there are sufficient differences between the goods and services at issue so as to avoid confusion. In addition, the applicant did request that the opponent provide proof of use for some of the marks initially relied upon. As already alluded to above, the opponent subsequently dropped its reliance upon those marks meaning that proof of use is no longer at issue.<sup>4</sup> As for the section 3(6) ground, the applicant denies this ground and puts the opponent to proof of its claims.
8. The opponent is represented by Beck Greener LLP and the applicant is represented by Forresters IP LLP. Only the opponent filed evidence in chief. In doing so, the opponent also filed written observations. No hearing was requested and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.
9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

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<sup>3</sup> There was acceptance of identity between the marks but I consider that this concession applied to the marks no longer relied upon.

<sup>4</sup> See paragraph two of the opponent's written submissions for confirmation of the same.

## **EVIDENCE**

10. The opponent's evidence came in the form of the witness statement of Mr Christian Rowland Buehrlen dated 24 August 2023. Mr Buehrlen is a Trade Mark Attorney at the opponent's representative firm and is, therefore, duly authorised to file evidence on the opponent's behalf. Mr Buehrlen's statement is accompanied by three exhibits, being those labelled CRB1 to CRB3. The aim of the evidence appears to demonstrate the applicant's previous withdrawal of its opposition against the opponent's second mark and also to demonstrate the goods that the applicant sells.

11. I do not intend to summarise the opponent's evidence or submissions in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

## **DECISION**

### **Section 5(2)(b): legislation and case law**

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

“(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 or association with the earlier trade mark.”

13. Section 5A of the Act states as follows:

“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.”

14. The opponent’s mark had not completed its registration process more than five years prior to the filing date for the applicant’s mark, meaning that it is not subject to proof of use pursuant to section 6A of the Act. This means that the opponent can rely upon all of the goods for which its mark is protected.

15. The following principles are gleaned from the decisions 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 Office for Harmonization 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-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

## Comparison of goods and services

16. The services opposed under the present ground are reproduced at paragraph two of this decision whereas the opponent's goods are reproduced at paragraph three.

17. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (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 opponent's submissions in respect of the similarity of the goods and services are as follows:

"The services in class 35 at issue relate to goods that are identical, or at least highly similar, to those for which the earlier mark is registered in classes 29 and 30, namely, various foodstuffs. The Applicant is essentially seeking registration in respect to online retailing or wholesaling services, as well as associated import export services or auctioneering services and the like, that essentially consist of trading in the goods for which the earlier mark is registered."

20. I appreciate that while 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.<sup>5</sup> I will discuss this issue further below when considering the applicant's retail services. However, for the time being I will state that I do not consider that the same principle applies to the applicant's services of "import-export agencies", "auctioneering" or "provision of an online marketplace for buyers and sellers of goods and services" and I have nothing to suggest otherwise.

21. In considering the applicant's term of "import-export agencies", I accept that the goods of the opponent may be subject to being imported and exported, however, they do not overlap in nature, method of use, purpose or user with the goods and neither are they competitive or complementary in nature. On the latter point, I appreciate that the import and export of goods may be important to those goods, however, I do not consider that the consumer will believe that the undertaking that provides import-export agency services will be the one that actually provides the goods.<sup>6</sup> As for trade channels, I do not consider that there is any overlap here and

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<sup>5</sup> *Oakley, Inc v OHIM*, Case T-116/06

<sup>6</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

I have nothing before me by way of evidence to suggest that it is common in the trade for a provider of various foodstuffs to also offer import-export agency services to third parties. As a result, I find these services to be dissimilar to the opponent's goods.

22. As for "auctioneering", I am not aware that the opponent's goods are those that would be auctioned to customers. As a result, I see no reason why these services would share any degree of overlap in nature, method of use, purpose, trade channels or user with the opponent's goods. Further, the goods and services are not complementary to one another and neither are they competitive in nature. As a result, I find that these goods and services are dissimilar.

23. When considering the applicant's service of "provision of an online marketplace for buyers and sellers of goods and services", it is my understanding that they are in line with services such as those provided by eBay or Amazon Marketplace. This is not a retail service and, instead, is a service that offers customers a platform by which they can either sell goods to third parties or buy goods from third parties. As far as I am aware, such services are not commonly provided for the sale of foods (such as those covered by the opponent's mark's specification) between users. Even if they were, any sales are likely to be conducted by third parties rather than the producers of the goods themselves meaning that there would be no overlap in trade channels between the goods and services at issue and neither would they be complementary as consumers would not believe the responsibility of the goods and services to lie with just one undertaking. In addition, I find that the goods and services plainly differ in nature, method of use and purpose. There may be some overlap in user as both are aimed at the general public at large. Lastly, the goods and services are not in competition. Taking all of this into account, I do not consider a general overlap in user is sufficient to give rise to a finding of similarity between the goods and services. Therefore, I find that they are dissimilar.

24. I turn now to consider the retail services of the applicant. As I have mentioned above, retail services for particular goods are capable of being similar to those goods. It is not necessary that the goods being retailed are identical to the goods

themselves, meaning that the applicant's retail services do not need to cover identical goods to those of the opponent in order for there to exist a degree of similarity between them. That being said, there still needs to be some degree of similarity and, on this point, I refer to 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 Wedgwood Plc v. Assembled Investments (Proprietary) Ltd* Case C-398/07P, wherein Mr Hobbs concluded that:

- i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
- ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
- iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;
- iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

25. I remind myself that the opponent relies on a limited range of foodstuffs in class 29 of its mark's specification, being the following:

"Fruit and vegetables in brine or cooked; jams; gherkins, olives, meat paste, liver sausage, beef sausage as preserves; paprika puree; sausage, salami;

yoghurt, butter, margarine, cheese; poultry, fresh or frozen; edible oils, edible fats; dried pulses, namely beans, peas, lentils.”

26. While some of the goods covered by the applicant's retail services are foods and beverages, this does not automatically mean that they are similar to the opponent's goods. I say this because I am of the view that the complementarity between entirely different foodstuffs is too insufficiently pronounced in order to warrant a finding of similarity between them. If it was the case that the retail of any food or beverage goods was similar to the above goods in class 29, this would offer an overly broad level of protection of such goods and services. Plainly, this cannot be the case. For example, I note that the applied for specification includes services that relate to *bee glue for human consumption*, which I understand to be dietary supplements. This product is too distant from the opponent's own goods to warrant a finding of similarity between them. Further, there are a range of beverage and baking ingredient goods that are, again, too far removed from the actual goods of the opponent in order to warrant a finding that the retail of the same is similar to the goods relied upon. In addition, there are goods covered by the applicant's services that do not relate to the opponent's goods whatsoever (such as machinery and kitchenware). While such goods are used in the preparation or consumption of foods, any similarity between them is too insufficiently pronounced.

27. As a result of what I have said above, I consider that the following services of the applicant are dissimilar to the opponent's goods:

“The bringing together, for the benefit of others, of a variety of goods, namely, agriculture, horticulture and forestry, colorants for food, machines and robotic mechanisms (machines) for processing cereals, fruits, vegetables and food, beverage preparation machines, electromechanical, beverage processing, machines, electric kitchen machines for chopping, grinding, crushing, mixing and mincing foodstuff, forks, spoons, knives and non-electric cutters, slicers, peelers for kitchen use, including those made of precious metals, installations and apparatus for cooking, drying and boiling, cookers, electric cooking pots, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages,

bee glue for human consumption, propolis for food purposes, vanilla (flavoring), yeast, baking powder, flour, semolina, starch for food, sugar, cube sugar, powdered sugar, tea, iced tea, chewing gums, edible ices, salt, agricultural and horticultural products, forestry products, live animals, fertilized eggs for hatching, plants, dried plants for decoration, fresh garden herbs, dried garden herbs for decoration, animal foodstuffs, malt not for human consumption, cat litter and litter for small animals, beers, preparations for making beer, mineral water, spring water, table water, soda water, energy drinks, protein-enriched sports beverages, alcoholic beverages (except beers), wines, whisky, liqueurs, alcoholic cocktails, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.”

28. All of the above being said, there are some retail services covered by the applicant's term that are identical or similar to the opponent's goods. For example, the services cover a range of meats products, pulses, olives, fruits, spreads and condiments, all of which I consider to be similar to the opponent's goods. Further, there are some goods covered by the applicant's services that cover fruit drinks and I deem the retail of such goods to be similar due to the sufficiently pronounced overlaps between fruit juices and the opponent's fruit goods. For all of the below services, I am of the view that they will share users and trade channels with the opponent's goods and, additionally, will share a complementary relationship. As a result, I consider that the following services of the applicant are similar to a medium degree with the opponent's goods:

“The bringing together, for the benefit of others, of a variety of goods, namely, meat, fish, poultry and game, processed meat products, dried pulses, soups, bouillon, processed olives, olive paste, milk and milk products, butter, edible oils, dried, preserved, frozen, cooked, smoked or salted fruits and vegetables, tomato paste, prepared nuts and dried fruits as snacks, hazelnut spreads and peanut butter, tahini (sesame seed paste), eggs and powdered eggs, potato chips, pasta, stuffed dumplings, noodles, pastries and bakery products based on flour, desserts based on flour and chocolate, bread, pasties, pita,

sandwiches, pies, cakes, desserts based on dough coated with syrup, puddings, custard, rice pudding, honey, condiments for foodstuff, spices, sauces (condiments), tomato sauce, confectionery, chocolate, biscuits, crackers, wafers, ice-cream, cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice, molasses for food, seeds, fruit and vegetable juices, fruit and vegetable concentrates and extracts for making beverages, non-alcoholic soft drinks, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.”

#### Conclusion of the goods and services comparison

29. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, the opposition under section 5(2)(b) aimed against those services I have found to be dissimilar will fail.<sup>7</sup> As a result, the opposition in reliance upon the section 5(2)(b) ground may only proceed in respect of those services I have found to be similar at paragraph 28 above.

#### **The average consumer and the nature of the purchasing act**

30. As the case law set out above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. 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. (as he then was) described the average consumer in these terms:

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<sup>7</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

“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.”

31. The goods and services at issue are those that will be selected by members of the general public at large. The goods will be available via general retailers where they will be displayed on shelves where they will be self-selected by the consumer. The goods will also be selected via those retailers’ online websites where a similar approach will apply, namely that the consumer will select the goods after having seen an image of them on a website. As for the services, I consider that they are most likely to be selected having considered, for example, promotional material (in hard copy or online) and signage appearing on the high street. While visual considerations will be an important part of the selection process, the services are also likely to be the subject of word-of-mouth recommendations meaning that aural considerations will not be an insignificant feature of the selection process..

32. The goods and services will be selected on a frequent basis and will be relatively inexpensive selections. The factors that the consumer will consider when selecting the goods will be relatively ordinary and will involve considerations as to flavour, ingredients and nutritional content. As for the services, these will be selected after the consumer gives consideration to factors such as stock, delivery methods (for online retail services) and price of goods. Taking all of this into account, I am of the view that the selection process for the goods and services is likely to attract a medium degree of attention.

### **Comparison of the marks**

33. It is clear from *Sabel 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

34. 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.”

35. 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.

36. The respective trade marks are shown below:

The opponent's mark	The applicants' mark
	

37. I have submissions from the opponent as to the similarity of the marks. I will not reproduce these here but confirm that I have taken them into account in making the following comparisons. I also remind myself that while the applicant has conceded some degree of similarity between the marks at issue, it has not specified to what degree.

#### Overall Impression

38. The opponent's mark is a figurative mark that consists of the word 'tat' in white that sits within a red speech bubble. The overall impression of the mark is dominated by the word 'tat' with the red speech bubble playing a lesser role. As for the applicant's mark, this is also a figurative mark but is simply a graphical presentation of the word 'TAT' in a standard black typeface. As a result, the overall impression of the applicant's mark lies in the word 'TAT'.

#### Visual Comparison

39. As above, the applicant accepts that the marks are similar. Plainly, they are. While presented differently, the marks share the word 'tat'/'TAT'. While the points of difference created by the presentation of marks will not be overlooked from a visual perspective, I am of the view that the impact of such will be limited due to the dominance of the word element in both marks. Overall, I am of the view that the marks are visually similar to a high degree.

#### Aural Comparison

40. Both marks will be pronounced as one syllable, being 'TAT'. The marks are, therefore, aurally identical.

#### Conceptual Comparison

41. The figurative element in the opponent's mark carries no concept meaning that the concept of both marks will lie in the word 'TAT'. In my view, 'TAT' may carry

different meanings to UK consumers. For example, 'TAT' may be understood as forming part of the phrase 'tit-for-tat', a reference to cheap goods of bad quality or short for 'tattoo'. That being said, I wish to point out that I do not necessarily consider that consumers would consider it logical for the marks at issue to make reference to tattoos or to cheap goods of bad quality. Alternatively, there may be some consumers who do not attribute it any meaning whatsoever meaning that it will be viewed as either a made-up or foreign language word.

42. In the event that the consumer does attribute a meaning to the word elements of the marks, I find that (regardless of what meaning this is) it will apply to both uses of 'TAT'. As such, I find that the marks are conceptually identical. However, if no meaning is attributed to either mark then I find that they will be considered conceptually neutral.

### **Distinctive character of the opponent's mark**

43. 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).”

44. Registered trade marks possess varying degrees of inherent distinctive character, perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods or services for which it is registered, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. In the present case, the opponent has not filed evidence of use meaning that I only have the inherent position to consider.

45. The opponent’s mark consists of the word ‘tat’ within a red speech bubble. As I have set out above, ‘tat’ may have different meanings or may be attributed no meaning whatsoever. As for the device element, while it will not go unnoticed altogether, I do not consider that it will materially contribute anything to the mark’s distinctiveness beyond that which is created by the word element. As such, the distinctiveness of the mark lies in the word ‘tat’. If ‘tat’ is attributed a meaning, none of those meanings are descriptive or allusive of the goods relied upon. That being said, I am of the view that use of a word with an identifiable meaning is only sufficient to warrant a finding that the opponent’s mark is inherently distinctive to a medium degree. Alternatively, in the event that consumers view the mark as a made-up or foreign language word with no meaning, I find that it will be attributed a high degree of inherent distinctive character.

### **Likelihood of confusion**

46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible

undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his or her mind.

47. I have found the parties' goods and services to be similar to a medium degree. I have found the average consumer for the goods and services to be members of the general public at large who will select the goods and services via primarily visual means, though I do not discount an aural component playing a role. I have concluded that during the selection of the goods and services at issue, the level of attention paid by the average consumer will be medium. In respect of the similarity of the marks at issue, I have found them to be visually similar to a high degree, aurally identical and conceptually identical or neutral depending on the consumers' understanding of 'TAT'. Where consumers view 'TAT' as being a word with no meaning, the opponent's mark will be inherently distinctive to a high degree but if it has a known meaning, it will only be distinctive to a medium degree.

48. Taking all of the above into account and bearing in mind the principle of imperfect recollection, I am of the view that consumers will misremember or inaccurately recall the parties' marks for one another. I consider that this finding is supported by the fact that the marks are dominated by the identical word 'tat'/'TAT'. While the stylistic differences are noted, they will not be points of focus that will enable the consumers to accurately recall the marks for each other. In my view, consumers will focus on the word 'tat'/'TAT' and will forget which mark sat on a red speech bubble device and which did not. For the avoidance of doubt, I find that this finding applies regardless of whether 'TAT' is understood by consumers as a word with a

meaning or one without. Consequently, I consider that there exists a likelihood of direct confusion between the marks.

49. For the sake of completeness, I turn now to consider indirect confusion.<sup>8</sup> Dealing with this point briefly, I am of the view that in the event that consumers are able to use the stylistic differences to accurately recall the parties' marks for one another, those differences will be viewed by consumers as logical indicators pointing to marks owned by the same or economically linked undertakings. I say this because the only points of difference are stylistic and are such that consumers will consider them alternative marks used by the same or economically connected undertaking. Consequently, I consider that there exists a likelihood of indirect confusion between the marks at issue.

50. As a result of the above, the opposition reliant upon the section 5(2)(b) ground has partially succeeded. I will now proceed to consider the section 3(6) ground.

### **Section 3(6): legislation and case law**

51. Section 3(6) of the Act states:

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

52. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni Dogaaji d.o.o. intervening*, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International*

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<sup>8</sup> For guidance on the test for indirect confusion, see the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10

*Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54]”.

53. An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull*.

54. I remind myself that under its section 3(6) ground, the opponent’s pleaded case is that the applicant has no *bona fide* intention to use the mark in respect of any of the services applied for. On this point, I note that the submissions of the opponent set out that this objection applies to all of the applicant’s services, save for those that would apply to dried legumes, rice and bulgar. This submission is not consistent with the pleaded case which is targeted against all services. While I will say nothing more about it now, I consider it necessary to return to discuss it further in the event that the section 3(6) ground succeeds.

55. In looking at the evidence before me, I note that it consists of just three exhibits. These are as follows:

- a. The first piece of evidence before me is a copy of a letter from the Tribunal relating to an opposition brought by the applicant against the opponent’s mark (being proceedings brought under opposition number 436992). The letter, dated 17 May 2023, sets out that as the opponent in that case (being the applicant in this one) failed to file evidence, the opposition had been withdrawn in accordance with Rule 20(3) of the Trade Marks Rules 2008;<sup>9</sup>
- b. The second item of evidence is a range of photographs that the opponent alleges as being evidence showing the applicant promoting its range of dried

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<sup>9</sup> CRB1

legumes, rice and bulgar at a trade show.<sup>10</sup> The evidence sets out that this evidence was also before the EUIPO in separate proceedings. I note that some photographs include a date stamp, one of which is in 2010 and another appears as though it is dated in 1998. The rest of the photographs (of which there are 12) are undated. Even for those photographs that are dated, it is not clear where they were taken; and

- c. Lastly, there is a printout taken from the applicant's website which the opponent claims to illustrate the products sold by the applicant.<sup>11</sup> The evidence is noted but it is taken from a '.com' website so it is not necessarily clear whether it is a website targeted at UK consumers. Further, it is undated.

56. In its written submissions, the opponent argues that because the applicant did not file evidence to rebut its bad faith claim that I must conclude that the evidence before me is a genuine and complete illustration of the goods sold by the applicant. I accept that if the opponent were to file evidence that gave rise to a *prima facie* bad faith case, the onus would then fall on the applicant to rebut the same. However, as I have already set out above, an allegation of bad faith is a serious one that must be distinctly proven. As a result, it is not simply the case that by filing unchallenged evidence that the opponent must succeed. If that unchallenged evidence fails to give rise to a *prima facie* case then it is of no assistance here.

57. In bringing its claim, the opponent seeks to rely on the fact that the applicant sought to file an opposition against its mark. While not expressly stated, this appears to me to be an argument in support of the fact that the applicant was fully aware of the opponent's use or intended use of its mark. The letter referred to at paragraph 55(a) above appears to have been filed with the intention of proving the applicant's prior knowledge. The fact that the applicant previously brought an opposition is noted, however, I fail to see how it assists the opponent's case. Firstly, the evidence before me is dated after the relevant date for these proceedings, being 8 September 2022 (the filing date of the applicant's mark). I appreciate that evidence

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<sup>10</sup> CRB2

<sup>11</sup> CRB3

that post-dates the relevant date in bad faith claims may shed light on past events, however, the opposition referred to by the opponent was not brought until 19 October 2022, being after the relevant date. It may very well be that preparations were in place to oppose the opponent's mark prior to the relevant date; however, this is neither borne out in evidence and, without anything further speaking to the applicant's actual intention, it is not relevant to the present case. I say this because the mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith.<sup>12</sup> There needs to be something more and, in the present case, I have nothing to suggest the intention of the applicant as at the time of filing its mark.

58. I turn now to consider the actual substance of the claim, namely that the applicant does not actually intend to use its mark for anything other than dried legumes, rice and bulgar. I appreciate that the applicant has remained relatively silent on this point and, in my view, evidence speaking to its intentions outside of dried legumes, rice or bulgar would have been of some assistance. However, the applicant did file a bare denial of such a claim in its counterstatement. As such, the success of the claim lies solely on the evidence before me. In my view, the opponent's evidence fails to establish, on the balance of probabilities, what the intentions of the applicant actually were as at the time it filed its mark. The evidence is made up of just a few photographs and a printout from the applicant's website. The majority of this evidence is undated and some even goes back as far as 1998. I do not accept such evidence as reflective of what the applicant's activities were around the relevant date in 2022. In my view, it is not uncommon for businesses to diversify over time and, therefore, the lack of evidence around the relevant date is a significant issue for the opponent. Taking all of this into account, I am unable to determine whether the applicant's mark was filed in bad faith and, given the burden for proving such a claim, it is my view that the opponent has failed to establish a *prima facie* case under the section 3(6) ground. Even if it was the case that the majority of the undated evidence was confirmed as being aimed at the relevant date, the mere fact that the applicant sells dried legumes, rice or bulgar does not

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<sup>12</sup> On this point, I refer to paragraph 40 of *Lindt* and paragraph 55 of *Koton* (both of which are cited above)

mean that it had dishonest intentions in filing its mark for a range of class 35 services.

59. To summarise, I am of the view that the opponent has failed to prove, on the balance of probabilities, that the applicant was acting in bad faith in filing its mark. I, therefore, find that the opponent's reliance upon the section 3(6) ground fails in its entirety.

## **CONCLUSION**

60. The opposition has partially succeeded. As a result, the applicant's mark is, subject to any successful appeal against this decision, refused registration for the following services:

Class 35: The bringing together, for the benefit of others, of a variety of goods, namely, meat, fish, poultry and game, processed meat products, dried pulses, soups, bouillon, processed olives, olive paste, milk and milk products, butter, edible oils, dried, preserved, frozen, cooked, smoked or salted fruits and vegetables, tomato paste, prepared nuts and dried fruits as snacks, hazelnut spreads and peanut butter, tahini (sesame seed paste), eggs and powdered eggs, potato chips, pasta, stuffed dumplings, noodles, pastries and bakery products based on flour, desserts based on flour and chocolate, bread, pasties, pita, sandwiches, pies, cakes, desserts based on dough coated with syrup, puddings, custard, rice pudding, honey, condiments for foodstuff, spices, sauces (condiments), tomato sauce, confectionery, chocolate, biscuits, crackers, wafers, ice-cream, cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice, molasses for food, seeds, fruit and vegetable juices, fruit and vegetable concentrates and extracts for making

beverages, non-alcoholic soft drinks, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.”

61. However, the applicant’s mark may, again subject to any successful appeal of this decision, proceed to registration for those services against which the opposition failed. Rather than include the entirety of the specification here, I will, for ease of reference, include only those services against which section 5(2)(b) ground failed. Those services are as follows:

Class 35: Provision of an online marketplace for buyers and sellers of goods and services; import-export agencies; auctioneering; the bringing together, for the benefit of others, of a variety of goods, namely, agriculture, horticulture and forestry, colorants for food, machines and robotic mechanisms (machines) for processing cereals, fruits, vegetables and food, beverage preparation machines, electromechanical, beverage processing, machines, electric kitchen machines for chopping, grinding, crushing, mixing and mincing foodstuff, forks, spoons, knives and non-electric cutters, slicers, peelers for kitchen use, including those made of precious metals, installations and apparatus for cooking, drying and boiling, cookers, electric cooking pots, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages, bee glue for human consumption, propolis for food purposes, vanilla (flavoring), yeast, baking powder, flour, semolina, starch for food, sugar, cube sugar, powdered sugar, tea, iced tea, chewing gums, edible ices, salt, agricultural and horticultural products, forestry products, live animals, fertilized eggs for hatching, plants, dried plants for decoration, fresh garden herbs, dried garden herbs for decoration, animal foodstuffs, malt not for human consumption, cat litter and litter for small animals, beers, preparations for making beer, mineral water, spring water, table water, soda

water, energy drinks, protein-enriched sports beverages, alcoholic beverages (except beers), wines, whisky, liqueurs, alcoholic cocktails, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.

62. For the avoidance of doubt, as well as those services directly mentioned in the preceding paragraph, the applicant's services that are not reproduced at paragraph 60 above are also permitted to proceed to registration.

## **COSTS**

63. While the opponent has enjoyed partial success, I am of the view that, on balance, the applicant has enjoyed the greater degree of success. I say this because its mark may proceed to registration for the majority of the services for which it sought registration. Therefore, I consider that it is the applicant that would ordinarily be entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. Having said that, given the applicant's limited engagement in these proceedings (in only seeking to file a counterstatement) and the fact that the opponent did succeed to some degree, I consider it appropriate in the circumstances to make no costs award. The parties are, therefore, ordered to bear their own costs.

**Dated this 27<sup>th</sup> day of June 2024**

**A COOPER**

**For the Registrar**

## ANNEX

### Class 35

Advertising, marketing and public relations; organization of exhibitions and trade fairs for commercial or advertising purposes; development of advertising concepts; provision of an online marketplace for buyers and sellers of goods and services; office functions; secretarial services; arranging newspaper subscriptions for others; compilation of statistics; rental of office machines; systemization of information into computer databases; telephone answering for unavailable subscribers; business management, business administration and business consultancy; accounting; commercial consultancy services; personnel recruitment, personnel placement, employment agencies, import-export agencies; temporary personnel placement services; auctioneering; the bringing together, for the benefit of others, of a variety of goods, namely, chemicals used in industry, science, photography, agriculture, horticulture and forestry, manures and soils, unprocessed artificial resins and unprocessed plastics, fire extinguishing compositions, adhesives not for medical, household and stationery purposes, paints, varnishes, lacquers, preservatives against rust, preservatives against deterioration of wood, thinners and binders for paints, pigments, preservatives for metals, shoe dyes, printing dyes and ink, toners (including filled toner cartridges), colorants for food, pharmaceuticals and beverages, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents, perfumery, cosmetics (except medicated cosmetics), fragrances, deodorants for personal use and animals, soaps (except medicated soap), dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes, abrasive preparations, emery cloth, sandpaper, pumice stone, abrasive pastes, polishing preparations for leather, vinyl, metal and wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing, industrial oils and greases, cutting fluids, dust absorbing, wetting and binding compositions, solid fuels, coal, firewood, liquid and gas fuels, petrol, diesel oil, liquified petroleum gas, natural gas, fuel oil and their non-chemical additives, candles, wicks, semi-finished wax, wax and paraffin for lighting

purposes, electrical energy, pharmaceutical and veterinary preparations for medical purposes, chemical preparations for medical and veterinary purposes, chemical reagents for pharmaceutical and veterinary purposes, radioactive substances for medical and veterinary purposes, medicated cosmetics, dietary supplements for pharmaceutical and veterinary purposes, dietary supplements for human consumption, dietary supplements for animals, nutritional supplements, medical preparations for slimming purposes, food for babies, herbs and herbal beverages adapted for medicinal purposes, medicated dental care preparations, teeth filling material, dental impression material, dental adhesives and material for repairing teeth, sanitary preparations for medical use, feminine hygiene pads, hygienic tampons, plasters, materials for dressings, diapers, including those made of paper and textiles, babies' diapers of paper, babies' diapers of textile, babies' napkins of paper, adult diapers of paper, adult diapers of textile, diapers for pets, preparations for destroying vermin, fungicides, herbicides, rodenticides, deodorants, other than for human beings or for animals, air deodorising preparations, disinfectants, antiseptics, detergents for medical purposes, medicated soap, disinfectant soap, antibacterial hand lotions, ores of non-precious metal, common metals and their alloys and semi-finished products made of these materials, cast iron for use in building, reinforcing materials of metal for building, common metals in sheet, rod, bar or billet form, goods and materials of common metal used for storage, wrapping, packaging and sheltering purposes, containers of metal (storage, transport), buildings of metal, frames of metal for building, poles of metal for building, metal boxes, packaging containers of metal, aluminium foil, fences made of metal, guard barriers of metal, metal tubes, storage containers of metal, metal containers for the transportation of goods, ladders of metal, metal window screens, metal drain traps, doors, windows, shutters, jalousies and their cases and fittings of metal, non-electric cables and wires of metal, ironmongery, small hardware of metal, screws, nails, bolts, nuts of metal, pins [hardware], washers of metal, pitons of metal, metal chains, fittings of metal for furniture, furniture casters of metal, casters of metal, door and window handles of metal, metal hinges, metal espagnolettes, metal locks, metal keys for locks, chains of common metal for keys, pulleys of metal, other than for machines, ventilation ducts, vents, vent covers, pipes, chimney caps, manhole covers, grilles of metal for ventilation, heating, sewage, telephone, underground electricity and air conditioning installations, metal panels or

boards (non-luminous and non-mechanical) used for signalling, route showing, publicity purposes, signboards of metal, advertisement columns of metal, signaling panels of metal, non-luminous and non-mechanical traffic signs of metal, pipes of metal for transportation of liquids and gas, drill pipes of metal and their metal fittings, valves of metal, other than parts of machines, couplings of metal for pipes, elbows of metal for pipes, clips of metal for pipes, connectors of metal for pipes, safes (strong boxes) of metal, metal railway materials, metal rails, metal railway ties, railway switches, bollards of metal, floating docks of metal, mooring buoys of metal, anchors, metal moulds for casting, other than machine parts, works of art made of common metals or their alloys, trophies of common metal, metal closures, bottle caps of metal, metal poles, framework of metal for building, pilings of metal, scaffolding towers of metal, metal pallets and metal ropes for lifting, loading and transportation purposes, metal hangers, ties, straps, tapes and bands used for load-lifting and load-carrying, wheel chocks made primarily of metal, decorative metal profiles, machines, machine tools and industrial robots for processing and shaping wood, metals, glass, plastics and minerals, 3D printers, construction machines and robotic mechanisms (machines) for use in construction, bulldozers, diggers (machines), excavators, road construction and road paving machines, drilling machines, rock drilling machines, road sweeping machines, lifting, loading and transmission machines and robotic mechanisms (machines) for lifting, loading and transmission purposes, elevators, escalators and cranes, machines and robotic mechanisms (machines) for use in agriculture and animal breeding, machines and robotic mechanisms (machines) for processing cereals, fruits, vegetables and food, beverage preparation machines, electromechanical, beverage processing machines, engines and motors, other than for land vehicles, parts and fittings therefor, hydraulic and pneumatic controls for engines and motors, brakes other than for vehicles, brake linings for engines, crankshafts, transmission gears for machines, cylinders for engines, pistons for engines, turbines, not for land vehicles, filters for engines and motors, oil, air and fuel filters for land vehicle engines, exhausts for land vehicle engines, exhaust manifolds for land vehicle engines, engine cylinders for land vehicles, engine cylinder heads for land vehicles, pistons for land vehicle engines, carburetors for land vehicles, fuel conversion apparatus for land vehicle engines, injectors for land vehicle engines, fuel economisers for land vehicle engines, pumps for land vehicle engines, valves for land

vehicle engines, starters for motors and engines, dynamos for land vehicle engines, sparking plugs for land vehicle engines, bearings (parts of machines), roller or ball bearings, machines for mounting and detaching tires, alternators, current generators, electric generators, current generators operated with solar energy, painting machines, automatic spray guns for paint, electric, hydraulic and pneumatic punching machines and guns, electric adhesive tape dispensers (machines), electric guns for compressed gas or liquid spraying machines, electric hand drills, electric hand saws, electric jigsaw machines, spiral machines, compressed air machines , compressors (machines), vehicle washing installations, robotic mechanisms (machines) with the abovementioned functions, electric and gas-operated welding apparatus, electric arc welding apparatus, electric soldering apparatus, electric arc cutting apparatus, electrodes for welding machines, industrial robots (machines) with the abovementioned functions, printing machines, packaging machines, filling, plugging and sealing machines, labellers (machines), sorting machines, industrial robots (machines) with the abovementioned functions, electric packing machines for plugging and sealing of plastics, machines for textile processing, sewing machines, industrial robots (machines) with the abovementioned functions, pumps [machines], self-regulating fuel pumps, electric kitchen machines for chopping, grinding, crushing, mixing and mincing foodstuff, washing machines, laundry washing machines, dishwashers, spin driers (not heated), electric cleaning machines for cleaning floors, carpets or floorings, vacuum cleaners and parts thereof, automatic vending machines, galvanizing and electroplating machines, electric door openers and closers, joints (parts of engines), forks, spoons, knives and non-electric cutters, slicers, peelers for kitchen use, including those made of precious metals, side arms and blades (weapons), tools and apparatus for personal beauty care use, tools and apparatus for shaving, epilation, manicure and pedicure, electric hand implements for straightening and curling hair, scissors, hand-operated [non-electric] hand tools for the repair of machines, apparatus and vehicles and for use in construction, agriculture, horticultural and forestry, none of them being power tools, electric or non-electric irons, steam irons, handles for hand-operated hand tools, measurement apparatus and equipment including those for scientific, nautical, topographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes,

periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, binoculars, stills for laboratory experiments, ovens and furnaces for laboratory experiments, apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, wearable activity trackers, microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, computer peripheral devices, cell phones, covers for cell phones, telephone apparatus, computer printers, scanners [data processing equipment], photocopiers, magnetic and optical data carriers and computer software and programmes recorded thereto, downloadable and recordable electronic publications, encoded magnetic and optic cards, prerecorded motion picture films, prerecorded music videos, antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods, ticket dispensers, automatic teller machines (ATM), electronic components used in the electronic parts of machines and apparatus, semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors, counters and quantity indicators for measuring the quantity of consumption, automatic time switches, clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment, eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof, apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity, alarms and anti-theft alarms, other than for vehicles, electric bells, signalling apparatus and instruments, luminous or mechanical signs for traffic use, fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles, radar apparatus, sonars, night vision apparatus and instruments, decorative magnets, metronomes, surgical, medical, dental and veterinary apparatus and instruments, furniture especially made for medical purposes, artificial limbs and

prostheses, medical orthopaedic articles, corsets for medical purposes, orthopaedic shoes, elastic bandages and supportive bandages, surgical gowns and surgical sterile sheets, adult sexual aids, condoms, babies' bottles, babies' pacifiers, teats, teething rings, bracelets for medical purposes, anti-rheumatism rings, anti-rheumatism bracelets, supports for ankle and wrist for medical use, lighting installations, lights for vehicles and interior-exterior spaces, heating installations using solid, liquid or gas fuels or electricity, central heating boilers, boilers for heating installations, radiators [heating], heat exchangers, not parts of machines, stoves, kitchen stoves, solar thermal collectors [heating], steam, gas and fog generators, steam boilers, other than parts of machines, acetylene generators, oxygen generators, nitrogen generators, installations for air-conditioning and ventilating, cooling installations and freezers, electric and gas-powered devices, installations and apparatus for cooking, drying and boiling, cookers, electric cooking pots, electric water heaters, barbecues, electric laundry driers, hair driers, hand drying apparatus, sanitary installations, taps [faucets], shower installations, toilets [water-closets], shower and bathing cubicles, bath tubs, toilet seats, sinks, wash-hand basins [parts of sanitary installations], washers for water taps, water softening apparatus, water purification apparatus, water purification installations, waste water purification installations, electric bed warmers and electric blankets, not for medical use, electric pillow warmers, electric or non-electric footwarmers, hot water bottles, socks, electrically heated, filters for aquariums and aquarium filtration apparatus, industrial type installations for cooking, drying and cooling purposes, pasteurizers and sterilizers, motor land vehicles, motorcycles, mopeds, engines and motors for land vehicles, clutches for land vehicles, transmissions, transmission belts and transmission chains for land vehicles, gearing for land vehicles, brakes, brake discs and brake linings for land vehicles, vehicle chassis, automobile bonnets, vehicle suspension springs, shock absorbers for automobiles, gearboxes for land vehicles, steering wheels for vehicles, rims for vehicle wheels, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle bodies, tipping bodies for trucks, trailers for tractors, frigorific bodies for land vehicles, trailer hitches for vehicles, vehicle seats, head-rests for vehicle seats, safety seats for children, for vehicles, seat covers for vehicles, vehicle covers (shaped), sun-blinds adapted for vehicles, direction signals and arms for direction signals for vehicles, windscreen wipers and wiper arms for vehicles, inner and outer tires for vehicle

wheels, tubeless tires, tire-fixing sets comprised of tire patches and tire valves for vehicles, windows for vehicles, safety windows for vehicles, rearview mirrors and wing mirrors for vehicles, anti-skid chains for vehicles, luggage carriers for vehicles, bicycle and ski carriers for cars, saddles for bicycles or motorcycles, air pumps for vehicles, for inflating tires, anti-theft alarms for vehicles, horns for vehicles, safety belts for vehicle seats, air bags (safety devices for automobiles), baby carriages, wheelchairs, pushchairs, wheelbarrows, shopping carts, single or multi-wheeled wheelbarrows, shopping trolleys, grocery carts, handling carts, rail vehicles, locomotives, trains, trams, waggon, cable cars, chairlifts, vehicles for locomotion by water and their parts, other than their motors and engines, vehicles for locomotion by air and their parts, other than their motors and engines, firearms, air pistols (weapons), spring-loaded firearms, adapted cases and shoulder straps therefor, heavy weapons, mortars and rockets, fireworks, sprays for personal defence purposes, jewellery, imitation jewellery, gold, precious stones and jewellery made thereof, cufflinks, tie pins, statuettes and figurines of precious metal, clocks, watches and chronometrical instruments, chronometers and their parts, watch straps, commemorative statuary cups made of precious metal, chaplets (rosaries), musical instruments and cases for musical instruments, paper and cardboard, paper and cardboard for packaging and wrapping purposes, cardboard boxes, paper towels, toilet paper, paper napkins, plastic materials for packaging and wrapping purposes, printing blocks and types, bookbinding material, printed publications, printed matter, books, magazines, newspapers, bill books, printed dispatch notes, printed vouchers, calendars, posters, photographs [printed], paintings, stickers [stationery], postage stamps, stationery, office stationery, instructional and teaching material [except furniture and apparatus], writing and drawing implements, artists' materials, paper products for stationery purposes, adhesives for stationery purposes, pens, pencils, erasers, adhesive tapes for stationery purposes, cardboard cartons [artists' materials], writing paper, copying paper, paper rolls for cash registers, drawing materials, chalkboards, painting pencils, watercolors [paintings], office requisites, paint rollers and paintbrushes for painting, rubber, gutta-percha, gum, asbestos, mica and semi-finished synthetic goods made from these materials in the form of powder, bars, panels and foils, stopping, sealing and insulating materials, insulating paints, insulating fabrics, insulating tape and band, insulation covers for industrial machinery, sealant compounds for joints, gaskets, O-

rings for sealing purposes, not for faucets, flexible pipes made from rubber and plastic, hoses made of plastic and rubber, including those used for vehicles, junctions for pipes of plastic and rubber, pipe jackets of plastic and rubber, hoses of textile material, junctions for pipes, not of metal, pipe jackets, not of metal, connecting hose for vehicle radiators, synthetic plastic as semi-finished products in form of foils, plates, rods, profiles, hoses, tubes, blocks, unworked or semi-worked leather and animal skins, imitations of leather, stout leather, leather used for linings, goods made of leather, imitations of leather or other materials, designed for carrying items, bags, wallets, boxes and trunks made of leather or stout leather, keycases, trunks [luggage], suitcases, umbrellas, parasols, sun umbrellas, walking sticks, whips, harness, saddlery, stirrups, straps of leather (saddlery), sand, gravel, crushed stone, asphalt, bitumen, cement, gypsum, plaster, concrete, marble blocks for construction, building materials (as finished products) made of concrete, gypsum, clay, potters' clay, stone, marble, wood, plastics and synthetic materials for building, construction, road construction purposes, non-metallic buildings, non-metallic building materials, poles not of metal for power lines, barriers not of metal, natural and synthetic coatings in the form of panels and sheets, being building materials, bitumen cardboard coatings for roofing, bitumen coating for roofing, doors and windows of wood and synthetic materials, traffic signs not of metal, non-luminous and non-mechanical, for roads, monuments and statuettes of stone, concrete and marble, building glass, prefabricated swimming pools not of metal (structures), aquarium sand, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, not for medical purposes, mirrors, beehives, artificial honeycombs and sections of wood for honeycombs, bouncing chairs for babies, playpens for babies, cradles, infant walkers, display boards, frames for pictures and paintings, identification plates, not of metal, identification tags, not of metal, nameplates, not of metal, identification tags of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage containers, transportation containers, chests, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic materials, furniture fittings, of wood or synthetic materials, ornaments and decorative goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic

or plaster, namely figurines, holiday ornaments for walls and sculptures, all made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, beeswax, plastic or plaster, baskets, not of metal, fishing baskets, kennels, nesting boxes and beds for household pets, portable ladders and mobile boarding stairs of wood or synthetic materials, bamboo curtains, roller indoor blinds [for interiors], slatted indoor blinds, bead curtains for decoration, curtain hooks, curtain rings, curtain tie-backs, curtain rods, non-metal wheel chocks, hand-operated non-electric cleaning instruments and appliances, brushes, other than paintbrushes, steel chips for cleaning, sponges for cleaning, steel wool for cleaning, cloths of textile for cleaning, gloves for dishwashing, non-electric polishing machines for household purposes, brooms for carpets, mops, toothbrushes, electric toothbrushes, dental floss, shaving brushes, hair brushes, combs, non-electric household or kitchen utensils, [other than forks, knives, spoons], services [dishes], pots and pans, bottle openers, flower pots, drinking straws, non-electric cooking utensils, ironing boards and shaped covers therefor, drying racks for washing, clothes drying hangers, cages for household pets, indoor aquariums, vivariums and indoor terrariums for animals and plant cultivation, ornaments and decorative goods of glass, porcelain, earthenware or clay, namely statues, figurines and vases, all made of glass, porcelain, earthenware or clay and cups, not of precious metal, mouse traps, insect traps, electric devices for attracting and killing flies and insects, fly catchers, fly swatters, perfume burners, perfume sprayers, perfume vaporizers, electric or non-electric make-up removing appliances, powder puffs, toilet cases, nozzles for sprinkler hose, nozzles for watering cans, watering devices, garden watering cans, unworked or semi-worked glass, except building glass, mosaics of glass and powdered glass for decoration, except for building, glass wool other than for insulation or textile use, ropes, packing strings, rope ladders, hammocks, fishing nets, tents, awnings, tarpaulins, sails, vehicle covers, not fitted, bags of textile, for packaging, padding and stuffing materials, except of rubber and plastics, including those of wool and cotton, textile fibers, raw spun fiber, glass fibers for textile use, yarns and threads for textile use, threads and yarns for sewing, embroidery and knitting, thread, elastic yarns and threads for textile use, woven or non-woven textile fabrics, textile goods for household use, curtains, bed covers, sheets (textile), pillowcases, blankets, quilts, towels, flags, pennants, labels of textile, swaddling blankets, sleeping bags for camping, clothing, including underwear and

outerclothing, other than special purpose protective clothing, socks, mufflers [clothing], shawls, bandanas, scarves, belts [clothing], footwear, shoes, slippers, sandals, headwear, hats, caps with visors, berets, caps [headwear], skull caps, laces and embroidery, guipures, festoons, ribbons (haberdashery), ribbons and braid, fastening tapes for clothing, cords for clothing, letters and numerals for marking linen, embroidered emblems, badges for wear, not of precious metal, shoulder pads for clothing, buttons for clothing, fasteners for clothing, eyelets for clothing, zippers, buckles for shoes and belts, fasteners, shoe and belt buckles, pins, other than jewellery, adhesive patches for decoration of textile articles, laces, needles, sewing needles, needles for sewing machines, needles for knitting and embroidery, boxes for needles, needle cushions, artificial flowers, artificial fruits, hair pins, hair buckles, hair bands, decorative articles for the hair, not made of precious metal, wigs, hair extensions, electric or non-electric hair curlers, other than hand implements, carpets, rugs, mats, prayer rugs, linoleum, artificial turf, linoleum for covering floors, gymnasium mats, wallpaper, wall hangings not of textile, games and toys, arcade video game machines, game apparatus and machines for use with an external display screen and monitor, including those coin-operated, toys for animals, toys for outdoor playgrounds, parks and game parks, gymnastic and sporting articles, fishing tackle, artificial fishing bait, decoys for hunting and fishing, Christmas trees of artificial material, ornaments for Christmas trees, artificial snow for Christmas trees, rattles (playthings), novelties for parties, dances (party favors), paper party hats, meat, fish, poultry and game, processed meat products, dried pulses, soups, bouillon, processed olives, olive paste, milk and milk products, butter, edible oils, dried, preserved, frozen, cooked, smoked or salted fruits and vegetables, tomato paste, prepared nuts and dried fruits as snacks, hazelnut spreads and peanut butter, tahini (sesame seed paste), eggs and powdered eggs, potato chips, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages, pasta, stuffed dumplings, noodles, pastries and bakery products based on flour, desserts based on flour and chocolate, bread, pasties, pita, sandwiches, pies, cakes, desserts based on dough coated with syrup, puddings, custard, rice pudding, honey, bee glue for human consumption, propolis for food purposes, condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce, yeast, baking powder, flour, semolina, starch for food, sugar, cube sugar, powdered sugar, tea, iced tea, confectionery, chocolate, biscuits,

crackers, wafers, chewing gums, ice-cream, edible ices, salt, cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice, molasses for food, agricultural and horticultural products, seeds, forestry products, live animals, fertilized eggs for hatching, plants, dried plants for decoration, fresh garden herbs, dried garden herbs for decoration, animal foodstuffs, malt not for human consumption, cat litter and litter for small animals, beers, preparations for making beer, mineral water, spring water, table water, soda water, fruit and vegetable juices, fruit and vegetable concentrates and extracts for making beverages, non-alcoholic soft drinks, energy drinks, protein-enriched sports beverages, alcoholic beverages (except beers), wines, whisky, liqueurs, alcoholic cocktails, tobacco, chewing tobacco, cigarettes, cigars, smokers' articles including those made of precious metals, pipes, mouthpieces for cigars and cigarettes, ashtrays, tobacco boxes, pocket apparatus for rolling cigarettes, cigarette paper, tobacco pipes, firestones, lighters for smokers, electronic cigarettes, cartridges for electronic cigarettes, matches, excluding the transport thereof, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.