

O/0667/24

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003641279 BY
BAIER GAODE (NINGBO) BRAND MANAGEMENT CO., LTD.
TO REGISTER:

Supins

AS A TRADE MARK IN CLASSES 7, 8, 10, 11 & 21

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 427513 BY
CHAPTER 4 CORP D.B.A. SUPREME

BACKGROUND AND PLEADINGS

1. On 13 May 2021, BAIER GAODE (NINGBO) BRAND MANAGEMENT CO., LTD. (“the applicant”) applied to register the trade mark shown on the cover of this decision (“the applicant’s mark”) in the UK for the following goods:

Class 7: Dishwashers; Mills for household purposes, other than hand-operated; Washing machines for household purposes; Brushes for vacuum cleaners; Electric juicers; Kitchen machines, electric; Cordless vacuum cleaners; Electric cordless sweepers; Rotary steam presses, portable, for fabrics; Garbage disposers; Mixing machines; Machines and apparatus for cleaning, electric; Steam mops; Hand-held tools, other than hand-operated.

Class 8: Hair clippers for personal use, electric and non-electric; Beard clippers; Razor blades; Hand implements for hair curling; Manicure sets; Depilation appliances, electric and non-electric; Flat irons; Electric hair straighteners; Eyelash curlers; Hand pumps; Laser hair removal apparatus, other than for medical purposes; Cutlery; Table knives; Forks; Spoons; Hair clippers for animals [hand instruments].

Class 10: Medical apparatus and instruments; Blood pressure measuring apparatus; Thermometers for medical purposes; Breast pumps; Orthopedic articles; Love dolls [sex dolls]; Contraceptives [apparatus]; Protective face masks for medical use; Physiotherapy apparatus; Dental apparatus and instruments; Massage apparatus; Esthetic massage apparatus; Vibromassage apparatus; Sphygmotensimeters; Glucometers.

Class 11: Electric fans; Hair dryers; Multicookers; Electric kettles [for household purposes]; Refrigerating apparatus and machines; Steam facial apparatus [saunas]; Disinfectant apparatus; Drinking

fountains; Pocket warmers; Lamps; Air purifying apparatus and machines; Water purifying apparatus and machines; Electric bath-water purifying apparatus for household purposes; Water purification machines; Table lamps; Shower heads; Cooking utensils, electric; Electric coffeepots; Roasting apparatus.

Class 21: Tableware; Heads for electric toothbrushes; Toothbrush holders; Toothbrushes; Toothbrushes, electric; Finger toothbrushes for babies; Toothbrushes [non-electric]; Toothbrush bristles; Water apparatus for cleaning teeth and gums; Floss for dental purposes; Interdental brushes for cleaning the teeth; Services [dishes]; Thermally insulated containers for food; Vacuum bottles; Cooking pots; Kitchen containers; Lint removers, electric or non-electric; Cups.

2. The applicant's mark was published for opposition purposes on 16 July 2021 and, on 14 October 2021, it was opposed by Chapter 4 Corp d.b.a. Supreme ("the opponent"). The opposition is reliant upon sections 5(3), 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("the Act"). The opponent also seeks to rely on a claim under sections 6(1)(c) and 56(2) of the Act, being those raised in reliance upon well-known marks.
3. In respect of the section 5(3) ground, the opponent relies on the following marks:



UK registration no. 916611857¹

Filing date 18 April 2017; registration date 12 August 2020

Priority date: 19 October 2016 (USA)

Relying on all goods, being those in class 25.

("the opponent's first mark");

¹ The opponent's first and second marks are comparable marks based on earlier EUTMs. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs.



UK registration no. 916611865

Filing date 18 April 2017; registration date 3 August 2020

Priority date: 19 October 2016 (USA)

Relying on all goods, being those in class 25.

("the opponent's second mark");



(series of two)

UK registration no. 3011586

Filing date 26 June 2013; registration date 27 November 2015

Priority date: 6 March 2013 (USA)

Relying on all goods and services, being those in classes 18, 28 and 35.

("the opponent's third registration");



UK registration no. 3461041

Filing date 24 January 2020; registration date 7 August 2020

Relying on all goods, being those in class 25.

("the opponent's fourth mark");



UK registration no. 3380415

Filing date 16 July 2018; registration date 22 November 2019

Priority date: 16 July 2018 (EU)

Relying on all goods, being those in class 34.

("the opponent's fifth mark"); and



International Registration designating the UK under no. 1457502

International registration date 29 November 2018

Date protection granted in the UK 30 May 2019

Relying on all goods, being those in class 9.

("the opponent's sixth mark").

4. The opponent's pleadings under the section 5(3) ground set out that it enjoys a reputation in all of the goods and services for which its marks are registered, being those listed at **Annex 1** to this decision. Further, the opponent claims that the marks at issue are similar to the applicant's mark and that as a result of the reputation enjoyed by the opponent's marks, the relevant public will believe that there is an economic connection between the marks at issue. This connection will result in the applicant taking unfair advantage of the opponent's marks and, further, use of the applicant's mark will cause a detriment to the opponent's reputation and/or a detriment to the distinctive character of the opponent's marks.

5. Under the section 5(4)(a) ground, the opponent relies on the following signs:



Claimed use throughout the UK since 1996

("the opponent's first sign")



Claimed use through the UK since 2006

("the opponent's second sign")

 / SUPR

Claimed use throughout the UK since 2010
("the opponent's third sign")

 / SUPRE

Claimed use throughout the UK since 2015
("the opponent's fourth sign")

6. The goods and services for which the opponent claims to have obtained goodwill in are set out at **Annex 2** of this decision. It is noted that the opponent claims that the use has not been limited to these listed goods and services. However, I only consider it appropriate to proceed in considering this ground based on the actual goods and services listed in the notice of opposition.
7. The opponent claims that it has built goodwill in its signs in the UK and that use of the applicant's mark will constitute a misrepresentation that will deceive customers into thinking that the goods provided under that mark are the goods of the opponent or that there is some relationship between the applicant and opponent. The opponent argues that this would result in damage or likely damage to its goodwill.
8. In addition to the section 5(3) and 5(4)(a) grounds, the opponent has argued that as all of its marks/signs consists of the element 'SUP', they make up a family of marks/signs. As a result, the opponent argues that registration or use of the applicant's mark will likely be associated with that of the same family as the opponent's marks/signs.
9. Under its claim reliant upon its well-known marks, the opponent relies on the same marks as it did under the section 5(3) ground as well as the unregistered word signs, 'SUP' and 'SUPREME'. The opponent argues that these constitute well-known marks in accordance with Article 6bis of the Paris Convention, and sections

6(1)(c) and 56(2) of the Act. Having considered the opponent's pleaded case in respect of this argument, it is noted that it makes reference to it being brought in reliance upon section 5(4)(a) of the Act. This is not applicable here for three reasons. Firstly, the opponent's notice of opposition under this argument refers only to the section 5(3) ground.² Secondly, section 56(2) of the Act refers to an applicant's mark taking unfair advantage or being detrimental to the distinctive character or repute of earlier well-known marks, being factors under section 5(3) grounds. Thirdly, the provisions that cover the present ground relate to well-known marks, not registered signs (see section 56(1) of the Act which refers to well-known trade marks). As a result, the present ground does not cover the issue of passing off under section 5(4)(a) so I will say no more about it. That being said, in its notice of opposition, the opponent has highlighted the same arguments under this ground as it did under its section 5(3) ground. Adapting those arguments for the present ground, the opponent's argument is, therefore, that its well-known marks are afforded protection against the applicant's mark in accordance with section 56(2) of the Act because it is similar to the earlier marks/signs and use of the same would take unfair advantage of and be detrimental to the distinctive character and/or repute of the well-known marks.

10. Lastly, the pleadings under the section 3(6) ground are that it is inevitable that the applicant was, at the time of filing its mark, fully aware of the earlier marks of the opponent and of its substantial commercial success in the UK and elsewhere. The opponent claims that the applicant's mark has been deliberately designed to confuse itself with the opponent's marks and, as such, it demonstrates a bad faith attempt to wrongfully associate the applicant and its goods with the opponent. Further, the opponent has relied on a claim that the applicant has adopted the same distinctive white italicised font against a red background (and provided examples of the same in its notice of opposition). This use of stylisation is claimed to have been done so as to deceive consumers and take unfair advantage of the opponent's earlier marks.

² See section E of the notice of opposition under which the opponent has selected the box for sections 5(1), (2) and (3). Given that the opponent only relies on section 5(3), this is taken as applying to this ground only.

11. The applicant filed a counterstatement denying the claims made and requested that the opponent provide proof of use in respect of the marks in its third registration.
12. The opponent is represented by Keltie LLP and the applicant is represented by Abion UK Limited (formerly known as Lane IP). Only the opponent filed evidence in chief. No hearing was requested and neither party filed written submissions in lieu. This decision is taken after careful consideration of the papers.
13. 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.

EVIDENCE

14. The opponent's evidence in chief came in the form of the witness statement of Darci J. Bailey dated 12 December 2022. Ms Bailey is the General Counsel and Secretary of the opponent, a position she has held since 2017. Her evidence is accompanied by 26 exhibits, being those labelled DJB1 to DJB26, and speaks to the opponent's use of its marks/signs.
15. I note that one exhibit of Ms Bailey's statement, being DJB26, is in a foreign language with English translations. In support of the accuracy of the translation, the opponent has filed the witness statement of Wu Min dated 16 August 2023. Wu Min is employed by Shanghai Eversince Translation Co., Ltd and is conversant in Chinese and English and confirms that, to the best of their knowledge and belief, the translation is true and correct.

16. I do not intend to summarise the documents filed by the parties 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

Proof of use

17. As above, the opponent's third registration has been put to proof of use. As this registration is relied upon under the section 5(3) ground only, I will refrain from undertaking an ordinary proof of use assessment here. I take this approach on the basis that the first requirement for section 5(3) grounds is that the opponent prove that its marks enjoy a reputation in the relevant territory. The existence of a reputation stems from use of the marks relied upon. Further, the test for proving reputation is significantly more onerous than that for proof of use.³ Therefore, if the opponent proves that the marks in its third registration enjoy a reputation then it follows that it has used the same. However, if it fails to prove a reputation, then the issue as to whether it has genuinely used those marks is not relevant on the basis that the 5(3) ground will be unable to proceed in any event.

18. So while the issue of genuine use does not fall away, the assessment of the same can be coupled together with my assessment of reputation, which I will consider where relevant below.

Section 5(3)

19. Section 5(3) of the Act states:

“5(3) A trade mark which –

³ A finding of genuine use only requires a sufficient level of use (as per the case of *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, this need not be quantitatively significant) whereas a finding of a reputation requires that the marks relied upon are known by a significant part of the relevant public in the relevant territory.

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

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

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

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

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

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there

is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

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

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

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

Spencer v Interflora, paragraph 74 and the court's answer to question 1 in L'Oreal v Bellure).

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

22. Before proceeding to consider the issue of a reputation, it is necessary to point out that as the opponent's first and second marks are comparable marks based on earlier EUTMs, use of the same in the EU prior to IP Completion Day (being 31 December 2020) is relevant to the assessment of the existence of a reputation. That being said, I do not consider this to be of any real relevance here. This is because, as per the case of *Pago International GmbH v Tirolmilch registrierte GmbH*, Case C-301/07, an EU trade mark may be considered to have a reputation if it is known by a substantial part of the territory of the European Community and that the territory of a single Member State alone may be considered as satisfying that requirement. Further, I note the case of *Whirlpool Corporations and others v Kenwood Limited* [2009] ETMR 5 (HC), wherein Geoffrey Hobbs Q.C. confirmed that when assessing reputation in the EU, the UK is a substantial part of the same. While these cases were determined prior to the UK's departure from the EU, they remain relevant insofar as use in the EU is a relevant factor.

Reputation

23. Having considered the evidence of the opponent, I note that it covers a range of topics, some of which are not particularly relevant to the assessment before me. For example, there is a significant part of the evidence that speaks to the brand's origins and discussions surrounding its marks. I am of the view that I can briefly summarise this section by setting out that the evidence confirms that the opponent's brand was launched in the USA in 1994 and began as an apparel, skating and accessories brand. The brand expanded into the UK by selling goods via selected third-party stores in 1996. Its first London store was opened in 2011. External and internal images of the store together with write ups in HYPEBEAST and The Daily Street regarding the store opening are provided in evidence.⁴ I note that the images of the store show use of the mark that is the same as that in the opponent's third registration and its fifth and sixth marks. For ease of reference during the discussion and assessment of the evidence, I will refer to this mark as simply the 'Supreme' figurative mark.

24. The opponent began selling goods online globally in 2006 via its website 'supremenewyork.com'. In 2013, the opponent commenced sales throughout the UK via its website and its downloadable app. A number of printouts from how the websites appears as at the date of the statement are provided.⁵ These are noted but are not reflective of the position as at the relevant date for these proceedings, being the applicant's mark's filing date of 13 May 2021.⁶ That being said, additional printouts taken from the internet archive facility, The Wayback Machine, are provided via this same exhibit. These printouts are from between 10 March 2015 and 22 June 2020 and show various uses of the word 'Supreme' alongside a range of jackets. However, the most prominent use is in the form of the 'Supreme' figurative mark. I note that these printouts are from a '.com' website, however, the

⁴ DJB4

⁵ DJB5

⁶ In respect of this evidence, I note that one t-shirt is shown with the sign 'SUPR' upon it. While I appreciate that this point is not relevant to the issue of reputation, however, it will become relevant below for the section 5(4)(a) ground so I consider it necessary to mention it here for completeness.

narrative evidence confirms that this is the opponent's only retail website that is accessible to all consumers, regardless of where they are located.

25. A printout showing web and social media analytics is provided that shows that between January and November 2022, the opponent had 322,562,072 users visit its website from the UK, 2,231,350 global followers on Facebook and 13,300,000 global followers on Instagram.⁷ While these figures are from after the relevant date, they are clearly significant figures and I consider it reasonable to infer that these figures did not simply appear in 2022 alone and that the visitor/follower figures from prior to the relevant date were still significant. Having said that, the follower figures relate to global followers and not UK or EU followers so I must consider them with a degree of caution.

26. The evidence goes on to discuss the opponent's app, which was launched in 2013. Images of how the app appears today are provided in the evidence and I note that the icon for the app is similar to the opponent's first, second and fourth marks.⁸ Within this same exhibit are also screenshots shown from within the app itself. Despite these screenshots being from the date of the witness statement, the narrative evidence confirms that the look of the app has not materially changed from launch. Further, the screenshots of the app appears to show the spring/summer look book from 2019 and show a range of jackets, shirts, bags, hats and jeans. Each page that covers the 2019 look book has the UK flag on it and the last page sets out that the opponent ships to the UK. Additional pages are shown that are not seemingly dated in any way that show additional goods such as underwear and waist bags. Lastly, I note that within the app itself is repeated use of the 'Supreme' figurative mark.

27. A range of products are provided that the narrative evidence confirms as being sold both online and in stores worldwide including in the UK since the mid-2000s. I do not intend to go over every product shown but note that they include trainers,

⁷ DJB6

⁸ DJB7

t-shirts, hats, tank tops⁹ and skate board decks. Additional non-clothing goods are also shown in evidence and I note that these include flasks, cookie jars, knives, water bottles, pipe skate keys, skateboard trucks, pipe wrench, vases, coffee makers, tea sets, glassware, kitchenware and spray bottles.¹⁰ All of these images show the 'Supreme' figurative mark. In respect of the 'Supreme' figurative mark, I note that the evidence attempts to show use of this mark on swing tags and labels¹¹ and on plastic bags that the opponent's goods are sold in.¹² The narrative evidence sets out that regardless of whether these goods have the 'Supreme' figurative mark on them, these branded labels and bags are always used.

28. The evidence then moves to focus on goods that use the 'Sup' figurative mark and I note that images are provided of various goods such as jumpers, pinball machines, hats, jeans, t-shirts, trainers, socks, mugs, playing cards.¹³

29. In respect of sales figures, the opponent has given a fairly broad and vague statement as to having achieved over £56 million worth of sales in the UK "in the past 5 years".¹⁴ The issue I have with this statement is that the evidence is dated December 2022 meaning that it is likely that these figures cover sales from 2018 to 2022. Given that the relevant date for these proceedings is 13 May 2021, a significant part of the figures provided are ultimately irrelevant and I have no way to determine precisely how much. The evidence sets out that to include every single invoice or sales documents would not materially assist the Registry. I appreciate that it is not appropriate to file all invoice evidence, however, I am of the view that it is reasonable to expect further information. For example, the opponent could have provided a yearly breakdown, a breakdown as to what goods are included in these broad figures and lastly, information as to how the figures relate to the different marks relied upon. All of this information could have been of

⁹ I note that these show the 'Sup' mark, however, the images shown are of goods in packaging and, therefore, folded over meaning that it is possible that the goods shown are emblazoned with the 'Supreme' marks. On this point, there is nothing sufficiently solid to demonstrate use of just the 'Sup' marks.

¹⁰ DJB9

¹¹ DJB11

¹² DJB12

¹³ DJB10

¹⁴ See paragraph 47 of the witness statement of Ms Bailey

assistance to the opponent, particularly given the very wide ranging nature of the goods shown in evidence before me under the different marks.

30. A very wide range of evidence is provided in respect of the opponent's collaborations with musical artists/celebrities over the years.¹⁵ I have no intention to discuss the entirety of the evidence as some of the collaborations relate to American based celebrities (both current and historical) that may not necessarily be well known in Europe or the UK. However, I will briefly mention that this evidence does cover collaborations with well-known celebrities such as James Brown, members of the Wu Tang Clan, Notorious B.I.G. and Lady Gaga. In addition, this same evidence shows a range of celebrities wearing Supreme products and I note that this includes famous musicians such as Kanye West, Pharell Williams, Nas, Kid Cudi and Justin Bieber, actors such as Jonah Hill and Robert Pattinson and sport stars such as Michael Jordan (which shows him wearing a collaboration t-shirt between 'SUPREME' and his own Air Jordan brand).

31. Advertising images are also shown in the evidence that seemingly relate to celebrities endorsements with Kate Moss and Lou Reed.¹⁶ The images shown include posters of these celebrities wearing the opponent's brand and the evidence confirms these posts as being displayed in London in 2012 (for the Kate Moss campaign) and 2009 (for the Lou Reed campaign).

32. At this point, the evidence circles back to the topic of collaborations, though this time with third party brands such as Levi's, Timberland, Vans, Nike, Stone Island, North Face and Louis Vuitton. Evidence in respect of these (and other) collaborations is shown in evidence by way of various press coverage articles.¹⁷ I note that the goods shown include various clothing goods, footwear, suitcases, bags, jackets, gloves, sunglasses, hats and skateboards. While the evidence mainly focuses on the USA,¹⁸ the narrative evidence confirms that these

¹⁵ DJB13

¹⁶ DJB14

¹⁷ See DJB15, generally, but for the Louis Vuitton collaboration, see DJB16.

¹⁸ I do appreciate that there is reference to the opponent's London store in one article and that the Louis Vuitton evidence does cover a fashion event in Paris (being part of the relevant territory for the comparable marks prior to IP Completion Day) and a pop-up shop in London.

collaborations have launched in the UK also. No sales in relation to these collaborations are provided but the narrative evidence confirms that the goods in the collaborations often sell out within hours or even minutes of going on sale. In respect of the latter two points, I have no reason to doubt the accuracy of the statements and accept that these collaborations were available in the UK and attracted a reasonable level of sales.¹⁹

33. As well as apparel goods, the opponent's evidence does include printouts that show a range of other goods that bear the 'Supreme' figurative mark.²⁰ Ordinarily, I would not list all of the goods shown. However, for reasons that will become clear below, I will list them in full. The goods shown are as follows:

Boxing gloves, baseball bats, basketballs, mini American footballs, nunchakus, baseball gloves and balls, baseball pennants, air horns, 'tall boy bags'²¹, a 'bible stash box', rolling papers, matches, carabiners, bottle openers, bike locks, keys, towels, flash lights, hammers, fire extinguishers, crowbars, sand timers, bedding, clocks, dog bowls, toys, water pistols, switchblade combs, Baoding balls, dominoes, beach balls, inflatable rafts, coin banks, dice sets, ballpoint pens, bathrobes and a branded brick.

34. In addition to the above, there is reference to a sticker of the 'Supreme' figurative logo. An image of the same is provided²² and I note that the narrative evidence confirms that these are not sold individually but are shipped with all online purchases of 'Supreme' goods in the UK.

35. The evidence shows images from a launch of the opponent's Fall/Winter 2016 at the opponent's London store. The images are provided by way of printouts from

¹⁹ I say 'reasonable' on the basis that there is no evidence as to the volume of goods that were the result of the collaborations. For example, it is possible that the collaborations may have been limited editions. On the latter point, see the Guardian article dated 4 April 2014 on page 147 at DJB15 which details the limited nature of the opponent's goods.

²⁰ DJB17 and DJB18

²¹ Seemingly brown bags that people in the state of New York use to carry their alcoholic receptacles and drink out of them in accordance with 'open container laws'.

²² DJB19

the website 'pausemag.co.uk'.²³ The images shown in evidence show long queues of people outside of the opponent's London store, some of which are sat on camping chairs. On this same point, the same exhibit also shows printouts from The Daily Street (via a '.co.uk' website) from 2014 that discuss the launch of the opponent's 20th anniversary collection. The article confirms that the products will be launched online and in-store on 24 April 2014 and ends with a comment to readers to "expect queues like you've never seen before".

36. The evidence then discusses the fact that in 2017, the opponent's brand was valued at over \$1 billion.²⁴ In this same exhibit, there is a list of the 50 greatest streetwear brands that was published in 2011 on the website Complex UK. I note that the Supreme brand is listed at number two of this list. In addition, there is an undated article (with a printout date of April 2017) from 'Ranker' which listed Supreme as the number one streetwear brand. While I appreciate that the former publication is a UK publication, there is nothing to suggest 'Ranker' is aimed at the UK or EU consumer.

37. I note that the Supreme brand received the 2018 Menswear Designer of the Year award, which is organised by the Council of Fashion Designers of America.²⁵ While noted, this is an American award and there is nothing to suggest its reach amongst the UK or EU consumer. This evidence also discusses the fact that in 2018, the New York Museum of Modern Art entered a plain white 'Supreme' t-shirt bearing the 'Supreme' figurative logo into its permanent collection.²⁶ This same evidence then shows that a similar event occurred a few months later in the Thyssen-Bornemisza Museum in Madrid but with a co-branded Supreme/Louis Vuitton skateboard case.

38. The evidence then goes on to discuss the opponent's social media accounts. Printouts of the opponent's Instagram²⁷ and Facebook²⁸ accounts are provided and

²³ DJB18

²⁴ DJB21

²⁵ DJB22

²⁶ DJB23

²⁷ DJB24

²⁸ DJB25

while these are noted, they are undated (though I do appreciate some posts shown are from prior to the relevant date). Further, the nature of social media is such that the opponent's accounts, being international ones,²⁹ are likely to include follower figures (which I appreciate are significant) from outside the relevant territory. I acknowledge that some of the followers are likely to also be from the EU or UK but I have no way to determine how much. Lastly, I do not consider that this evidence adds much beyond what the evidence already shows.

Assessment of the evidence

39. Having considered the evidence as a whole, I am of the view that it is clear that the opponent enjoys a reputation. I say this because whilst I have my issues with how the turnover evidence is provided, it is reasonable to infer that it is still reflective of a sizeable level of use between 2018 and the relevant date. Further, such a level of turnover does not simply appear overnight and the remaining evidence (such as the advertising in the UK in 2009 and 2012, the presence of a flagship store in London which opened in 2011 and the various collaborations with celebrities and other brands over the years) supports a finding that the opponent's brand had a presence in the UK prior to 2018. So while it has not provided turnover figures for the years leading up to 2018, I consider it reasonable to infer that its turnover would have been at a suitable level for a number of years before then. In addition, I wish to point out that the evidence, as a whole, points towards the fact that the opponent's brand is one that is desirable and sought after. I say this because the opponent's brand has been listed as the second best streetwear brand in a UK publication in 2011. Further, the evidence (by way of images of long queues, warnings to consumers to expect high volume of queues at the London store and confirmation that the opponent's products commonly sell out in hours, if not minutes) confirms that there is a high level of interest and hype surrounding new launches of the opponent's products in the UK and at the London store.

²⁹ I note that one account shown is for the Supreme London Store but this only has 3,688 likes.

40. All of the above being said, there are two issues I must now consider further, the first of which is what marks the reputation vests in and the second is what marks or goods/services this reputation is attached to. These issues stem from the fact that, as discussed above, the evidence regarding turnover is vague and does not breakdown the proportion of sales that can be attribute to the 'Sup' or 'Supreme' marks and neither does it breakdown what proportion can be attributed to the different goods shown in evidence. The latter point is of particular importance because, as I have set out above (particularly at paragraphs 32 and 35), the evidence covers a significantly wide range of goods, some of which are not even at issue here.

41. In respect of the marks at issue, it is clear to me that the 'Supreme' figurative mark is used prominently by the opponent on all goods' swing tags, packaging, its website and store fronts. Further, this mark appears in the majority of the press coverage before me. I, therefore, have no hesitation (subject to what I will say regarding the goods and services below) that any reputation would vest in these marks. The issue, however, comes from the use of the 'Sup' marks. There is evidence in relation to the use of just the letters 'Sup' on some goods, however, this is limited in that it shows just 19 products bearing this mark. Some of these products are not even at issue under the present ground (such as pinball machines, playing cards and mugs, for example). Further, I note that only the front of some products are shown and, to me, it appears as though the remaining letters of the word 'Supreme' may wrap around the product itself to show the full word. As an illustrative example, I note the following two items:



42. In my view, it appears as though the letter 'R' appears on the arm of the jumper, therefore implying that the letter 'EME' appear on the back. This, in my view, is a reasonable inference to make given the prominence of the 'Supreme' wording throughout the evidence at large. All of these issues are compounded by the fact that the evidence of turnover does not breakdown the different level of sales between 'SUP' and 'SUPREME' branded goods. Again, this issue is further compounded by the sheer prominence of the branding 'Supreme' throughout the entirety of the evidence and while I note that the opponent uses the 'Sup' marks as icons for its apps or social media profile pictures, the supporting use of 'Supreme' leads me to the view that consumers will not attribute much to any use of 'Sup' in this context. In my view, to prove such a reputation in this branding, more sufficiently solid evidence would need to be filed as opposed to just a limited reference to 'Sup' branded goods and no supporting sales figures in relation to the same. As such, I am not willing to conclude that the evidence before me is sufficient to demonstrate a reputation in the 'SUP' marks. Given that this covers the opponent's first, second and fourth marks, I hereby find that the reliance upon those marks hereby fails.

43. As for the remaining marks, my assessment now moves to a consideration of what goods and services the reputation vests in. This is a particular point of concern because the evidence is so broad as to the goods covered and the turnover provided is not broken down in anyway. Having said that, the evidence does pay particular attention to skateboarding, generally, as well as the provision of goods such as clothing, footwear, hats and various types of bags (such as rucksacks, waist bags and duffel bags, amongst others) and the retail of the same. In light of this clear focus, I am satisfied that any reputation would vest in such goods. However, in comparing the goods and services covered by the evidence with the goods and services covered by the specifications of the remaining marks, I note that the specifications do not include class 25 goods meaning that there can be no reputation in clothing, footwear or hats. I do not intend to reproduce the specifications in full here but note that the opponent's third registration does, however, include goods in class 18 (being bags) and 28 (being skateboard decks) and retail services in class 35. As for the fifth and sixth marks' specifications, these

include lighters for smokers in class 24 and a range of class 9 goods such as eyewear, sunglasses and mobile phone accessories.

44. Dealing with the opponent's fifth and sixth mark's first, I am of the view that while some of the goods covered are shown in evidence, their presence is limited. This, together with the fact that, as above, the opponent's main business focus appears to be on clothing, hats, skateboarding and bags and the vague turnover provided is such that I am not willing to find that the opponent enjoys any level of reputation in these goods. Therefore, the reliance upon the opponent's fifth and sixth mark fails.

45. Turning to the opponent's third registration, I am of the view that this does cover goods that are shown prominently in the evidence. As above, the opponent clearly focuses its business on skateboarding, generally, as well as the sale of clothing goods, footwear, hats and various types of bags. I consider that such a reputation can be said to apply to such goods and, in addition, the fact that the opponent operates its own physical clothing stores as well as online stores means that the reputation can be said to extend to the retail services in class 35 also (but only insofar as it applies to the goods covered by the evidence). In my view, the finding of a reputation applies to the following:

Class 18: All-purpose sports and athletic bags; duffel, gym, shoulder, tote and travel bags; fanny packs and waist packs; backpacks; knapsacks; satchels; luggage; trunks; suitcases.

Class 28: Skateboard decks.

Class 35: Retail services connected with the sale of all-purpose sports and athletic bags; duffel, gym, shoulder, tote and travel bags; fanny packs and waist packs, backpacks, knapsacks, satchels, luggage, trunks, suitcases, skateboard decks, clothing, footwear and headgear.

46. Given the extensive nature of the evidence before me regarding the 'Supreme' brand, I am content to conclude that the opponent's third registration enjoys a strong reputation in respect of the goods and services listed in the preceding paragraph. For the avoidance of doubt, I wish to point out that the word 'Supreme' obviously dominates the marks and that the stylisation used is somewhat banal. However, I am of the view that the repeated and prominent use of this stylisation and colour scheme across all of the evidence is such that a degree of the reputation can be said to vest in both the overall get up of the mark as well as the colour used. Given that only the opponent's third registration has survived the assessment of a reputation, I will refer to it simply as the opponent's registration going forward.

Family of marks

47. Before proceeding to consider the issue of a link, I pause briefly to discuss the opponent's claim that its marks constitute a family. As set out above, the evidence demonstrates the existence of a reputation in a series of two marks, the difference between them lying solely in their colours. Reliance upon just two identical marks in a series cannot be said to constitute a family of marks. Secondly, even if the evidence was suitable to support any reliance upon the 'Sup' marks, I do not consider that the collection of 'Sup' and 'Supreme' marks are such that they could be said to possess common characteristics that would make it possible for them to be regarded as part of a 'family' of marks.³⁰ As such, the family of marks argument fails at the first hurdle and I will say no more about it.

Link

48. As noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

³⁰ See *Il Ponte Finanziaria SpA v OHIM*, Case C-234/06

The degree of similarity between the conflicting marks.

49. The applicant's mark is a figurative mark that consists of the word 'Supins' presented in black and in a slightly italicised, but still standard, typeface. The overall impression of the applicant's mark lies in the word 'Supins' with the stylisation used having a negligible role. The marks in the opponent's registration are, save for the use of colour, identical. They consist of the word 'Supreme' in a white, slightly italicised, but still standard, typeface that sits within a red (in the first mark) or black (in the second mark) rectangular background. The overall impression of the marks in the opponent's registration lie in the word 'Supreme' with the stylisation playing a lesser role.

50. In comparing the marks visually, I note that they share the letters 'S-u-p' at their beginnings. I also note that they use same italicised typeface. While this is of a limited impact in the marks, it is still a point of visual similarity. The marks differ in the presence of the letter 'r-e-m-e' at the end of the opponent's marks and 'p-i-n-s' at the end of the applicant's. As for the use of colour, the applicant's mark is registered in black and white so is therefore capable of being presented in white and on a coloured background, such as black or red. Taking all of this into account, I am of the view that the marks are visually similar to a medium degree.

51. Aurally, the applicant's marks may be pronounced as either 'SUH-PINS' or 'SOO-PINS'. The opponent's mark will be pronounced in the ordinary way, namely 'SOO-PREEM'. Both marks consist of two syllables and, taking the latter pronunciation of the applicant's mark, I find that the marks are aurally similar to a medium degree based on the shared use of an identical first syllable. However, if the first pronunciation of the applicant's mark is adopted, I find that the marks are aurally similar to only a low degree.

52. Conceptually, the opponent's marks will have a known meaning that will be immediately graspable to consumers. The applicant's mark, however, will be viewed as a made up or foreign language word with no meaning. As a result, the marks are conceptually dissimilar.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public.

53. The applicant's goods cover those in classes 7, 8, 10, 11 and 21 and include, *inter alia*, machines for household purposes, hair clippers, razors, manicure sets, electric hair straighteners; eyelash curlers, hair removal apparatus, cutlery, medical apparatus, types of environmental control apparatus and installations, utensils and apparatus for household and kitchen use and toothbrushes. The opponent's reputed goods and services, however, cover bags in class 18, skateboard desks in class 28 and retail services of bags, clothing and footwear in class 35.

54. While I do not intend to conduct a full goods and services between all of the goods and services at issue, I can confirm that I have considered the criteria set out in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97 and in the *Treat* case, [1996] R.P.C. 281 and conclude that the goods and services at issue differ in nature, method of use, purpose and trade channels. Further, they are not competitive in nature and neither are they complementary to each other. Even though there may be an overlap in user, this is not sufficient to warrant a finding of similarity between them. Therefore, I find that the goods and services are dissimilar.

55. That being said, as already confirmed above, goods and services do not need to be similar in order for the present ground to succeed. On this point, I remind myself that the goods and services at issue will be selected by the same section of the relevant public meaning that it can be said that there is some degree of closeness between them.

The strength of the earlier mark's reputation.

56. I have found that the marks in the opponent's registration enjoy a strong reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use.

57. Inherently, the marks in the opponent's registration are only distinctive to a medium degree. I say this because from an inherent point of view, they use fairly banal stylisation and a well-known English language word. Having said that, the use before me (being that which I have assessed above) is such that I am minded to find that the marks enjoy a high degree of enhanced distinctive character. For the avoidance of doubt, while the stylisation used may be fairly banal, the frequency of use of the mark in this exact style throughout the evidence is such that it leads me to find that a degree of distinctiveness lies in the stylisation used and not just the word 'Supreme'.

Whether there is a likelihood of confusion

58. In the case of confusion under section 5(2)(b) grounds, a degree of similarity between goods and services is required for a finding of confusion,³¹ which is based on the normal expectations of average consumers. Therefore, in the normal course of events, where there is no similarity between goods and services, there would be no confusion. As a result, I find that there exists no likelihood of confusion in present case, be that direct or indirect.

Conclusions on link

59. In considering the issue of a link, I consider it necessary to discuss the fact that the applicant's mark is a figurative word that is registered in black. While that may be the case, notional and fair use of the same means that it may be used in a white typeface on a red background, being the same as the marks in the opponent's registration. In addition, I refer to the evidence of the opponent which shows that the applicant has used its mark in the following ways:³²

³¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

³² DJB26



60. I note that this evidence is undated. However, I also note that identical images were presented in the opponent's notice of opposition (which was dated October 2021). While not formally before the Tribunal in evidence at that time, the images can be said to reflect the position just five months after the relevant date. In my view, it is reasonable to conclude that, as at the relevant date, the above use was either already in place or the applicant had taken firm steps towards such use.

61. I bring up the applicant's use of its mark here because it is relevant to the issue of the present ground in light of Tribunal Practice Notice 1/2014 ("the TPN") which discusses the relevance of colour to a mark registered in black and which but used extensively in a particular colour or colours. The TPN is as follows:

"1. The judgement of [the CJEU] in Case C-252/12, *Specsavers International Healthcare Limited and Others v Asda Stores Limited* indicates that:

"Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours with the result that it has become associated in

the mind of a significant portion of the public with that colour or combination of colours, the colour or colours which a third party uses in order to represent a sign alleged to infringe that trade mark are relevant in the global assessment of the likelihood of confusion or unfair advantage under that provision.

Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that the fact that the third party making use of a sign which allegedly infringes the registered trade mark is itself associated, in the mind of a significant portion of the public, with the colour or particular combination of colours which it uses for the representation of that sign is relevant to the global assessment of the likelihood of confusion and unfair advantage for the purposes of that provision."

2. The judgment concerns Community trade marks and proceedings under Community Trade Mark Regulation 207/2009. However, it is applicable, by analogy, to the interpretation of the corresponding provisions of the Trade Mark Directive, and therefore to the interpretation of national law implementing those provisions.

3. The CJEU judgment relates to the relevance of colour to a mark registered in black and white but used extensively in a particular colour or colours. It confirms that such use of colour may be taken into account as a relevant factor when considering the likelihood of confusion, detriment or unfair advantage being taken of the registered black and white mark.

4. The judgment also confirms that the established use of a later mark in a particular colour or colours may also be taken into account when assessing such matters in the context of infringement.

5. These findings may be applicable, by analogy, to opposition and cancellation proceedings before the Office based on grounds under s.5(2) and/or 5(3) of the Trade Marks Act 1994.

6. Unlike in infringement proceedings, the Registrar is required to consider the likelihood of confusion "in all the circumstances in which the mark applied for might be used if it were to be registered". See Case C-533/06, *O2 Holdings v Hutchison 3G UK* at paragraph 66. Consequently, where the earlier mark is registered in colour, or colour is established as forming part of the distinctive character of the earlier mark (even though it is registered in black and white), the potential or actual use of the later mark in the same colour(s) will be considered to be a relevant factor.

7. The colour(s) in which the later mark has or could be used will also be considered to be a relevant factor when assessing whether a later mark takes unfair advantage of an earlier mark of repute.

8. Because the Registrar's enquiry covers all normal and fair future potential uses of the later mark the Registrar takes the position that evidence of the existing use of the later mark in different colour(s) to those in which the earlier mark has been registered, or used, is not a relevant factor when assessing the likelihood of confusion.

9. In the Registrar's view, the CJEU's judgment does NOT mean that colour should be taken into account where the earlier mark has been registered in black and white but either i) has not been used or ii) has been used in colour(s), but the extent and consistency of such use is not such that the colour(s) formed part of the distinctive character of the earlier mark at the relevant date. In these circumstances, colour will be regarded as irrelevant. Only the marks on the register, or proposed to be added to the register, will be compared."

62. The first mark in the opponent's registration is registered in colour and the evidence before me is clear in that the opponent has been consistently using this particular arrangement of colours since it began trading in the 1990s.³³ Further, the

³³ As evidenced not only by the products shown in evidence but via packaging, carrier bags and the inclusion of stickers with products bought online.

opponent's mark has been shown in evidence to have been enhanced through use to a high level. Thus, the particular colours in the opponent's mark have been established as forming part of their distinctive character. As per the TPN above, how the applicant uses its mark (i.e. the same colour) is relevant to the consideration as to whether there exists a link between the marks.

63. In *Starbucks Corp v EUIPO*, Case T-398/16, the General Court considered the application shown below for 'services for providing drinks':



The earlier mark which formed the basis of the opposition under the Article 8(1)(b) of the EU Trade Mark Regulations, equivalent to section 5(2)(b) of the UK Act, was:



64. This earlier mark is registered for 'café, cafeteria, snack bar, coffee bar and coffee house' services, which were found to be identical to the services of the application. The Court reviewed the similar structure of the marks and stated:

"52 Secondly, the similarity linked to the general appearance of the signs at issue is strengthened, first, by the use of the same colours, black and white, which highlight the central element, the band which surrounds it and the elements reproduced in that band, and, secondly, by the use of the same font for the word elements 'starbucks coffee' and 'coffee rocks'. That equivalence, which is also shown by the positioning of the various abovementioned

elements, contributes towards giving the impression that the marks at issue are based on the same structure.

53. Furthermore, as the applicant observes, the trade mark application seeks protection in respect of a composite figurative sign which does not refer to any colour in particular. That sign's user could therefore, as EUIPO acknowledged at the hearing, use it in the colour of its choice, including in the black, green and white shades of the earlier EU trade marks No 5671938 and No 689786 and the earlier United Kingdom trade mark. The protection of a trade mark which does not refer to any colour in particular is extended to all colour combinations as from the time when the mark is registered (see, to that effect, judgment of 18 June 2009, LIBRO v OHIM — Causley (LiBRO), T-418/07, not published, EU:T:2009:208, paragraph 65)."

65. As I have already mentioned, the applicant's mark not only notionally covers all colours, but is actually used in the same colours as the opponent's marks in a highly similar structural way.

66. Taking all of the above into account, I am of the view that when consumers are confronted with the applicant's mark they would call to mind the earlier marks. In making this finding, I appreciate that the applicant's mark would be viewed on dissimilar goods. However, I remind myself that there does not need to be a degree of similarity between the goods and services for a link to exist. Further, I have found there to be a degree of closeness between the goods and services at issue on the basis that they are all ordinary consumer goods and services that will be sought by the same sections of the relevant public. In my view, the issue as to dissimilar goods and services will be overcome by the fact that not only do the opponent's marks enjoy a strong reputation and a high degree of distinctive character but, as set out above, the applicant's mark is capable of use, and has been shown in evidence as being used, in the same get-up and colour scheme as that used by the opponent's reputed marks. In addition, the shared use of the first three letters, being 'S-u-p' and the same colour contrast and typeface will also assist the consumer in making this link.

Damage

67. The opponent has pleaded that use of the applicants' mark would, without due cause, lead to an unfair advantage in favour of the applicants and cause a detriment to both the reputation of the opponent and the distinctive character of the opponent's third registration.

Unfair Advantage

68. I bear in mind that unfair advantage has no effect on the consumers of the opponent's goods and services. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to select the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark.

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

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

70. I note that save from making some bare denials in its counterstatement, the applicant has been entirely silent about its intentions, which means that I can infer what its intentions were based on surrounding circumstances. The evidence put forward by the opponent leads me to conclude that the applicant did intend to exploit the opponent's reputation in its registration. By seeking to register a mark with the identical letters 'S-u-p' presented in an identical or very highly similar typeface to the reputed marks and its subsequent use of the same in a white typeface on a red background are factors that point towards a finding that the applicant intended to benefit from the power of attraction and reputation of the marks in the opponent's registration. Such a benefit would exploit, without paying any financial compensation, the marketing effort expended by the opponent meaning that the applicant would find it easier to sell its goods because of the familiarity brought about by the reputation of the opponent's registration. In my view, this applies even where the goods and services are dissimilar. I say this not only because of the similarity of the marks and the levels of distinctiveness and reputation that lie in the opponent's marks but also based on the clear desirability of the opponent's brand, being one that, as I have discussed throughout this decision, is highly sought after by the relevant public. Again, this is a section of the relevant public that would also seek to buy the applicant's goods.

71. As a result of the above, I find that the claim to unfair advantage succeeds.

Detriment to distinctive character

72. As damage is made out on the basis of unfair advantage, I do not consider it necessary to go on to consider the opponent's other heads of damage. However, for the sake of completeness, I will briefly consider detriment to distinctive character on the basis that, as per the reasoning set out in the case of *Lonsdale Sports Limited v Erol*, [2013] EWHC 2956 (Ch) wherein Norris J. rejected a claim that there was a likelihood of confusion between the appellant's mark and the respondent's mark. However, he found that:

“34. As I have said above, at a first glance the block of text in the Respondent's Mark looks like something that Lonsdale might be connected with (a first impression soon dispelled in the case of the average consumer). But that first glance is important. Those who look at the wearer of a product bearing the Respondent's Mark might not get more than a glance and might think the wearer was clad in a Lonsdale product. The creation of that illusion might be quite enough for the purchaser of a "look-alike" product: indeed who but such a person would knowingly buy a "pretend" product? Further, it undoubtedly dilutes the true "Lonsdale" brand by putting into circulation products which do not proclaim distinctiveness but rather affinity with a reputable brand.

73. It is my view that the presence of the applicant's mark, being one with an identical beginning and the same get up as that of the marks in the opponent's registration, undoubtedly dilutes the true 'Supreme' brand by putting into circulation products which do not proclaim distinctiveness but rather affinity with a reputable brand by sharing the same get up of the opponent's reputed registration. In these circumstances, I consider that there is a serious risk that detriment to distinctive character would occur.

74. The opposition based upon section 5(3) succeeds in its entirety.

Article 6bis of the Paris Convention

75. The opponent seeks to rely on the same range of earlier marks as it did under the section 5(3) ground as well-known marks under Article 6bis of the Paris Convention, and section 56 of the Act.

76. Section 56 of the Act states as follows:

“56 Protection of well-known trade marks: Article 6bis.

(1) References in this Act to a trade mark which is entitled to protection under the Paris Convention as a well known trade mark are to a mark

which is well-known in the United Kingdom as being the mark of a person who—

(a) is a national of a Convention country, or

(b) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country, whether or not that person carries on business, or has any goodwill, in the United Kingdom. References to the proprietor of such a mark shall be construed accordingly.

(2) The proprietor of a trade mark which is entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark is entitled to restrain by injunction the use in the United Kingdom of a trade mark which, or the essential part of which, is identical or similar to the well known trade mark—

(a) in relation to identical or similar goods or services, where the use is likely to cause confusion, or

(b) where the well known trade mark has a reputation in the United Kingdom and the use of the other trade mark—

(i) is without due cause, and

(ii) takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the well known trade mark.

This right is subject to section 48 (effect of acquiescence by proprietor of earlier trade mark).

(2A) Subsection (2)(b) applies irrespective of whether the goods or services in relation to which the other trade mark is used are identical with, similar to or not similar to those for which the well known trade mark is entitled to protection.

(3) Nothing in subsection (2) affects the continuation of any *bona fide* use of a trade mark begun before the commencement of this section.

77. Section 6(1)(c) of the Act states as follows:

Meaning of “earlier trade mark”.

(1) In this Act an “earlier trade mark” means—

[...]

(c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention as a well known trade mark.

78. In order to rely on its marks under this ground the opponent would therefore have to show that the marks were well-known to the UK public, but it would not be required to prove use. Given the outcome of my assessment of a reputation above and the general outcome of the section 5(3) ground, I see no merit in considering the reliance upon the earlier marks as well-known marks further. This is on the basis that it offers nothing beyond the section 5(3) which the opponent has already succeeded on.

Section 5(4)(a)

79. Section 5(4)(a) of the Act reads as follows:

“(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa)

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

80. Subsection (4A) of Section 5 states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

81. I can deal with this ground swiftly. Even though the evidence is satisfactory for a finding of a strong level of goodwill in the opponent’s first sign, the issue here is the distinct nature of the parties’ fields of activity. While I appreciate that passing off can be found in instances where the parties operate in different fields of activity, I remind myself that where there is no or only a tenuous degree of overlap between the parties’ respective fields of activity, the burden of proving misrepresentation and resulting damage is a heavy one.³⁴ On this point, I refer to the case of *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 wherein Slade L.J. said (at page 535) that the further removed from one another the respective fields of

³⁴ See the comments of Millet L.J. in the case of *Harrods Limited v Harrodian School Limited* [1996] RPC 697

activity are, the less likely it is that a member of the public could be reasonably confused in to thinking that one business was connected to the other. In the present case, I appreciate that the evidence of the opponent's use is extensive, however, the goods and services at issue are too distinct and I do not consider that the evidence discharges the heavy burden referred to by Millet L.J in *Harrods*. As such, I find that this ground offers nothing further to the opponent beyond its section 5(3) ground.

Section 3(6): legislation and case law

82. 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.”

83. 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 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]".

84. 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*.

85. I remind myself that the opponent's claim under this ground is that it is inevitable that the applicant is fully aware of the earlier marks of the opponent and of its substantial commercial success in the UK and elsewhere. The opponent claims that as a result of this knowledge, the applicant deliberately designed a mark to confuse itself with the opponent's reputed marks and, as such, it demonstrates a bad faith attempt to wrongfully associate the applicant and its goods with the opponent. Further, the opponent relies on the fact that the applicant has adopted the same distinctive white italicised font against a red background (and provided examples of the same in its notice of opposition as well as in evidence). It is claimed that the opponent did this so as to deceive consumers and take unfair advantage of the opponent's earlier marks.

86. In response to the above claim, the applicant filed a series of bare denials wherein it denied that it was aware of the opponent's brand, its commercial success in the UK and that it deliberately designed its mark to confuse or associate itself with the opponent's branding.

87. Given the fact that I have found that the opponent's third registration enjoys a strong reputation in the UK and is a series of marks that enjoys a high degree of distinctive character, I consider it implausible to suggest that the applicant was not aware of the opponent's branding as at the date of filing its mark. Plainly, the opponent operates a large business operation that covers a range of goods and while there is no specific evidence as to the applicant's actual knowledge of the opponent's brand, I consider it reasonable to infer that it must have had some degree of knowledge at the relevant date. On this point, I remind myself that an applicant's knowledge of an opponent's use of its mark (be that in the UK or not) does not, in itself, point to a finding that the mark must have been filed in bad faith.³⁵ There must be something more and I will consider this further below.

³⁵ See the cases of *Lindt and Koton* (cited above) and *Malaysia Dairy Industries Pte Ltd v Ankenævnet for Patenter og Varemærker* Case C-320/12.

88. The opponent's evidence in respect of the present ground relates to how the applicant uses its mark.³⁶ I also note that this same exhibit makes reference to a number of Chinese proceedings involving the applicant where it has been accused of copying other well-known reputed brands such as Chanel, Christian Dior and Adidas, amongst others.³⁷

89. In respect of the images of the applicant's website, I note that there are approximately 20 pages showing the way in which the applicant uses its mark. I do not intend to reproduce all images of the way in which the applicant has used its mark but provide the following as examples:



90. In addition to the above, there is a range of written evidence in Chinese. As I have discussed above, this exhibit has been duly translated. Having considered the translations, I am not convinced that they offer anything to the opponent's case so I see no need to discuss them further.

91. While the above evidence is undated, I remind myself that evidence from after the relevant date can be relevant if it casts light backwards on the position as at that time.³⁸ In my view, and as already discussed above (when considering the section 5(3) ground), I consider it reasonable to conclude that this evidence is capable of

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³⁷ I appreciate that this is mentioned in evidence but it did not form part of its pleaded case.

³⁸ *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

pointing to the position as at the relevant date in that either the applicant was selling the goods in this manner at that time or provisions were in place to begin doing so.

92. In my view, the way in which the applicant has been using its mark is capable of pointing to the fact that, as at the relevant date, it had the intention of using a get-up and stylisation that was identical or very similar to that used by the opponent in its strongly reputed marks. Given what I have said throughout this decision in respect of the opponent's reputation, I am of the view that, on the balance of probabilities, the evidence gives rise to a *prima facie* case to suggest that applicant intended to take unfair advantage of the opponent's marks by exploiting its reputation.³⁹

93. In order for bad faith proceedings before the Tribunal to succeed (where the ground has been denied by an applicant), it is imperative that the opponent file evidence that gives rise to a *prima facie* case. Once this has been done, it is on the applicant to rebut the same. Failure to do so means that the proceedings in reliance upon that ground must succeed. In the present case, the opponent has provided evidence that, in my view, gives rise to a *prima facie* case of bad faith. The applicant has failed to answer this case and, as a result, the opposition in reliance upon the present ground must succeed. I hereby find that the applicant's mark was filed in bad faith meaning that the section 3(6) ground succeeds in full.

CONCLUSION

94. The opposition succeeds in its entirety and, subject to any successful appeal of my decision, the applicant's mark is refused for all goods that it seeks to protect.

COSTS

95. As the opponent has succeeded, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the

³⁹ This is capable of being an action that is consistent with bad faith, as per *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch).

circumstances, I award the opponent the sum of £1,400 as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition and considering the counterstatement in response:	£400
Preparing evidence:	£800
Official fees:	£200
Total:	£1,400

96.I hereby order BAIER GAODE (NINGBO) BRAND MANAGEMENT CO., LTD. to pay Chapter 4 Corp d.b.a. Supreme the sum of £1,400. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 15 day of July 2024

A COOPER
For the Registrar

ANNEX 1

The opponent's first mark

Class 25

Casual cotton pants; cotton khakis; pleated pants; cotton chinos; flat-front pants; fatigue trousers; tapered pants; skinny pants; cut-off pants; cargo shorts; pleated shorts; flat-front shorts; chino shorts; plaid shorts; capri shorts; cut-off shorts; wrap shorts; slipshorts; skorts; peddle pusher shorts; toreador shorts; puffer vests; button-down vests; cotton pullovers; quilted jackets; waxed-cotton jackets; cotton jackets; puffer jackets; cotton turtlenecks; cotton and wool casual polo shirts; cotton and wool casual jerseys; cotton and wool casual warm up jackets, trousers, pants and suits; woollen cardigans; knitted cardigans; fur-lined cardigans; jeans; dinner trousers; corduroy pants; linen pants; suit pants; cigarette pants; dress pants; culottes; stirrup pants; stovepants; drainpipe trousers; peg-leg pants; flared pants; bootcut pants; slacks; wide-leg pants; straight-leg pants; leather pants; leather-look pants; casual leggings; yoga pants; harem pants; jodhpur pants; pajama pants; wool pants; denim shorts; leather shorts; casual cotton shorts; pajama shorts; wool shorts; silk shorts; denim vests; fur vests; fringe vests; casual hooded vests; fur-lined vests; casual high-necked vests; hunting vests; knitted vests; leather vests; suit vests; woollen vests; tweed vests; silk vests; biker vests; casual sweater vests; casual zipped vests; wool pullovers; casual pullovers; leather jackets; faux-leather jackets; suit jackets; business jackets; formal jackets; dinner jackets; casual jackets; casual reversible jackets; faux-fur jackets; fur jackets; cashmere jackets; woollen jackets; bomber jackets; trench jackets; varsity jackets; casual fleece jackets; biker jackets; duffel jackets; trucker jackets; blouson jackets; casual hooded jackets; peacoat jackets; shearling jackets; bolero jackets; safari jackets; mackintosh jackets; suede jackets; corduroy jackets; linen jackets; tuxedo jackets; double breasted jackets; single breasted jackets; casual anoraks; casual zipped jackets; casual button-down jackets; casual high-collar jackets; military jackets; casual winter jackets; business suits; casual suits; three-piece suits; tuxedo suits; double breasted suits; dinner suits; wedding suits; lounge suits; zoot suits; single breasted suits; mandarin suits; linen suits; corduroy suits; tweed suits; flannel suits; Nehru suits; wool suits; cotton suits; casual turtlenecks; wool

turtlenecks; kimonos; sarongs; kaftans; woollen scarves; knitted scarves; silk scarves; cashmere scarves; cotton scarves; pashmina scarves; flannel scarves; bathrobes; graduation robes; satin robes; lace robes; silk robes; velour robes; leather gloves; faux-leather gloves; fur-lined gloves; knitted gloves; woollen gloves; leather fingerless gloves; motorcycle gloves; driving gloves; suit ties; bow ties; bolo ties; ascot ties; ties; cravats; neckerchiefs; casual ankle boots; knee-high boots; over-the-knee boots; Chelsea boots; desert boots; high-heel boots; mid-heel boots; leather boots; faux-leather boots; suede boots; cowboy boots; moccasins; snow boots; steel-toe boots; riding boots; military boots; combat boots; trench boots; wedge boots; Wellington boots; trench coats; women's, children's and infant's wear, namely, evening dresses; sequined dresses; business dresses; ball dresses; formal dresses; casual dresses; cotton dresses; knitted dresses; silk dresses; night dresses; cocktail dresses; summer dresses; wool sweater dresses; running pants; tennis shorts; cycling shorts; boxing robes; cycling gloves; hiking gloves; ski boots; hiking boots; football boots; American football boots; rugby boots; golf jackets; rugby shirts; ski jackets.

The opponent's second mark

Class 25

Casual cotton shirts; casual Henley t-shirts; casual cotton t-shirts; tank tops (namely, underwear); casual long-sleeve overshirts; casual raglan long-sleeve shirts; casual tie-dye long-sleeve shirts; casual distressed shirts; boxer shorts (namely underwear); cotton boxer shorts (namely underwear); tube tops; v-neck sweaters; crew neck sweaters; mock neck sweaters; shawl neck sweaters; distressed sweaters; bikini briefs, g-strings, c-strings, tangas, thongs, brassieres, boy-shorts, tap pants, knickers, panties, briefs, trunk briefs, midway briefs (all being underwear); wool caps; boater hats; panama hats; straw hats; trapper hats; wide-brim hats; floppy hats; lifeguard hats; outback hats; tam hats; flip flops; winter boots; Oxford button down shirts; dress shirts; flannel shirts; office shirts; chambray shirts; denim shirts; linen shirts; dinner shirts; business shirts; casual shirts; poet shirts; nightshirts; tailored shirts; wool shirts; casual polo-neck t-shirts; casual hooded t-shirts; casual turtle-neck t-shirts; casual crew neck t-shirts; casual v-neck t-shirts; casual scoop neck t-shirts; casual raglan sleeve t-shirts; casual sleeveless t-shirts; casual cap sleeve t-shirts; casual slim fit t-

shirts; casual baggy t-shirts; casual muscle fit t-shirts; casual tie-dye t-shirts; wool t-shirts; casual tank tops; silk tank tops; wool tank tops; casual cotton tank tops; tank tops (namely, sleepwear); casual sweatshirts; fur-lined sweatshirts; casual buttoned sweatshirts; knitted sweatshirts; casual zipped sweatshirts; casual cotton sweatshirts; casual sleeve-less sweatshirts; casual distressed sweatshirts; long-sleeve Oxford button down shirts; long-sleeve dress shirts; long-sleeve flannel shirts; long-sleeve office shirts; long-sleeve chambray shirts; long-sleeve denim shirts; long-sleeve linen shirts; long-sleeve dinner shirts; long-sleeve poet shirts; long-sleeve nightshirts; long-sleeve tailored shirts; casual crew neck long-sleeve shirts; casual v-neck long-sleeve shirts; casual scoop neck long-sleeve shirts; casual slim fit long-sleeve shirts; casual baggy long-sleeve shirts; casual cotton undershirts; silk undershirts; wool undershirts; lace undershirts; casual hooded sweat shirts; wool boxer shorts (namely underwear); silk boxer shorts (namely underwear); batwing tops; frock tops; casual off-shoulder tops; tunic tops; silk tops; lace tops; casual cotton tops; wool tops; casual scoop-neck tops; casual cropped tops; poncho tops; fur-lined tops; jean tops; casual sweaters; wool sweaters; casual cotton sweaters; cashmere sweaters; knitted sweaters; cable knit sweaters; casual zipped sweaters; casual buttoned sweaters; stockings; petticoats; long johns; long thermal underwear (namely loungewear); bodysuits; flat caps; Breton caps; tweed caps; leather caps; newsboys caps; duckbill caps; bearskin caps; cricket caps; night caps; army hats; berets; bowler hats; cloche hats; cowboy hats; deerstalker hats; tweed hats; fedora hats; fez hats; gambler hats; leather hats; felt hats; pillbox hats; pork pie hats; top hats; trilby hats; fascinator hats; beaver hats; balmoral hats; capuchon hats; Fulani hats; karakul hats; casual beanies; veils; helmet liners; office footwear; business footwear; casual leather footwear; casual suede footwear; high heels; wedge shoes; ballerina shoes; brogues; loafers; mules; gladiator sandals; court shoes; ankle boots; calf boots; knee-high boots; over-the-knee boots; Chelsea boots; military boots; kitten heeled shoes; clogs; desert boots; derby shoes; espadrilles; jazz shoes; moccasins; platform shoes; slippers; steel-toe boots; stilettos; casual trainers; business trainers; hiking boots; walking shoes; denim jeans; shirts for joggers; cycling shirts; basketball shirts; tennis shirts; baseball shirts; football shirts; rugby shirts; hockey shirts; lacrosse shirts; American football shirts; golf shirts; long-sleeve cycling shirts; long-sleeve basketball shirts; long-sleeve tennis shirts; long-sleeve baseball shirts; long-sleeve football shirts; long-sleeve rugby shirts; long-

sleeve hockey shirts; long-sleeve lacrosse shirts; long-sleeve American football shirts; golf caps; baseball caps; golf hats; tennis shoes; football shoes; American football shoes; golf shoes; basketball shoes; baseball shoes.

The opponent's third registration

Class 18

All-purpose sports and athletic bags; beach, book, carry-on, duffel, diaper, gym, leather shopping, shoulder, tote and travel bags; fanny packs and waist packs; backpacks; knapsacks; purses; garment bags for travel; satchels; luggage; luggage tags; trunks; suitcases; hat boxes for travel not of paper or cardboard; cosmetic cases and bags sold empty; toiletry and vanity cases sold empty; tool bags sold empty; attaché cases; briefcases; briefcase-type portfolios; document cases; men's clutches; business cases; business card cases; calling and credit card cases; key cases; leather key chains; wallets; bank note holders; billfolds.

Class 28

Skateboard decks.

Class 35

Retail services connected with the sale of all-purpose sports and athletic bags, beach bags, book bags, carry-on bags, duffel bags, diaper bags, gym bags, leather shopping bags, shoulder bags, tote and travel bags, fanny packs and waist packs, backpacks, knapsacks, purses, garment bags for travel, satchels, luggage, luggage tags, trunks, suitcases, hat boxes for travel not of paper or cardboard, cosmetic cases and bags sold empty, toiletry and vanity cases sold empty, tool bags sold empty, attaché cases, briefcases, briefcase-type portfolios, document cases, men's clutches, business cases, business card cases, calling and credit card cases, key cases, leather key chains, wallets, bank note holders, billfolds, skateboard decks, clothing, footwear, headgear, clothing, namely, shirts, t-shirts, long-sleeved shirts, under shirts, polo shirts, rugby shirts, jerseys, dress shirts, denim jeans, hooded sweat shirts, warm-up suits, snow suits, parkas, cardigans, pants, jean jackets, cargo pants, shorts, boxer shorts, tops, tank tops, sweat shirts, sweat jackets, sweat shorts, sweat pants,

sweaters, vests, fleece vests, pullovers, jackets, coats, blazers, suits, turtlenecks, reversible jackets, wind-resistant jackets, shell jackets, sports jackets, golf and ski jackets, heavy coats, over coats, top coats, swimwear, beachwear, visors, headbands, ear muffs, thermal underwear, long underwear, underclothes, caps, hats, knit caps, headwear, scarves, bandanas, belts, neckwear, ties, robes, gloves, boots, rainwear, footwear, shoes and sneakers, women's, children's and infant's wear, namely shirts, t-shirts, long-sleeved shirts, under shirts, jerseys, dress shirts, denim jeans, hooded sweat shirts, wraps, warm-up suits, parkas, cardigans, pants, jean jackets, shorts, tops, tank tops, sweat shirts, sweat jackets, sweat shorts, sweat pants, sweaters, vests, pullovers, jackets, coats, reversible jackets, wind-resistant jackets, shell jackets, sports jackets, golf and ski jackets, heavy coats, over coats, top coats, swimwear, beachwear, visors, headbands, ear muffs, thermal underwear, long underwear, underclothes, caps, hats, headwear, scarves, bandanas, belts, pajamas, sleepwear, gloves, boots, rainwear, footwear, shoes and sneakers, dresses, skirts, blouses, robes, children's and infant's polo shirts, children's and infant's rugby shirts, children's and infant's snow suits, children's and infant's cargo pants and infant body suits.

The opponent's fourth mark

Class 25

Clothing; lounge wear; shirts; polo shirts; t-shirts; tank tops; sleepwear; pyjamas; pyjama tops; pyjama bottoms; sweatshirts; hoodies; undershirts; underwear; loungewear; tracksuits; tracksuit tops; tracksuit bottoms; track jackets; boxer shorts (namely underwear); briefs (namely underwear); tops; track tops; sweaters; jumpers; socks; vests; jackets; coats; parkas; gloves; jerseys; blazers; pullovers; suits; belts ; wraps; dresses; shorts; robes; bathrobes; trousers; pants; jeans; skirts; cardigans; scarves; ties; headgear; caps; baseball caps; trucker caps; hats; beanies; footwear; trainers; sneakers; flip-flops (footwear); boots.

The opponent's fifth mark

Class 34

Lighters for smokers.

The opponent's sixth mark

Class 9

Eyewear; sunglasses; sports eyewear; cases for eyewear, sunglasses and sports eyewear; sports goggles; cases for mobile phones; cell phone backplates; cell phone cases; cell phone covers; cell phone straps; portable satellite radios.

ANNEX 2

The opponent's first sign

Clothing, footwear and headgear; Bags, backpacks and wallets; Sunglasses, eyewear and mobile phone cases; Skateboard decks, skateboard tools; Lighters for smokers, as well as other smoking-related goods including ashtrays, matches and rolling papers; Radios, speakers; Knives; Hair clippers, combs, hair combs; Torches, solar lamps; hammers, crowbars, wire cutters; sleds; punching bags; boxing gloves; table tennis paddles; table tennis balls; case for table tennis paddles; baseball bats; baseball gloves; baseball balls; kayaks; tennis balls; bike pumps; pet bowls.

Retail services related to all the above-mentioned goods

The opponent's second sign

Clothing, footwear and headgear; Bags, backpacks and wallets; Sunglasses, eyewear and mobile phone cases; Skateboard decks, skateboard tools; Lighters for smokers, as well as other smoking-related goods including ashtrays, matches and rolling papers; mugs; water bottles; playing cards; locks.

Retail services related to all the above-mentioned goods.

The opponent's third sign

Clothing, footwear and headgear; bags, backpacks and wallets; mobile phone cases; key chains; skateboard decks; skateboard tools; lighters for smokers; spray paints; whistles.

Retail services related to all the above-mentioned goods.

The opponent's fourth sign

Clothing, footwear and headgear; bags, backpacks and wallets; mobile phone cases; power stations; chargers; skateboard decks, skateboard tools; body boards; paddle boards; cases; key chains; refrigerators.

Retail services related to all the above-mentioned goods.