

**O/0861/24**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00003873452**

**BY HEPsy LIMITED**

**TO REGISTER THE FOLLOWING TRADE MARK:**



**IN CLASSES 8, 20, 21, 24 AND 35**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**

**UNDER NO. 440062**

**BY D-MARKET ELEKTRONIK HIZMETLER VE TICARET ANONIM SIRKETI**

## BACKGROUND AND PLEADINGS

1. On 01 February 2023, HEPSY LIMITED (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK (“the contested mark”). The application was accepted and published for opposition purposes on 10 February 2023 in respect of the following goods and services:

**Class 8:** *Spoons being tableware; Forks being tableware; Knives being tableware.*

**Class 20:** *Glass furniture; Door furniture made of stoneware; Furniture; Furniture and furnishings; Indoor furniture; Household furniture.*

**Class 21:** *China mugs; mugs made of china; cups made of china; ornaments made of china; mugs of porcelain; glass tableware; porcelain mugs; decorative chinaware; Dinnerware; Tableware; Mugs made of porcelain; Ceramic hollowware; Earthenware mugs; Ceramic mugs; Teapots; Drinking mugs made of porcelain; Dishware; Glassware; Glass mugs; Glassware for household purposes; Tableware; Tableware, cookware and containers; Glass vases; Glass plates; Wine glasses; Glass storage jars; Baking dishes made of glass; Tea services [tableware]; Scoops [tableware]; Insulated lids for plates and dishes; Coffee services [tableware]; Plastic plates [dishes].*


**Class 24:** *Household textiles; Household textile goods.*

**Class 35:** *Retail services connected with the sale of furniture; Retail services relating to furniture; Retail services in relation to furniture; Retail services in relation to furnishings; Retail services relating to home textiles; Retail services in relation to cookware; Retail services in relation to tableware; Retail services in relation to kitchen appliances; Retail services relating to kitchen knives; Wholesale services relating to furniture; Wholesale services in relation to furniture; Wholesale services in relation to furnishings; Wholesale services in relation to kitchen appliances; Wholesale services in relation to food cooking equipment; Wholesale services in relation to cutlery; Wholesale services*

*relating to kitchen appliances; Wholesale services in relation to kitchen knives;  
Retail services in relation to domestic electronic equipment.*

2. On 05 April 2023, the application was opposed in full by D-Market Elektronik Hizmetler ve Ticaret Anonim Sirketi (“the opponent”) on the basis of Sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

3. Under Section 5(2)(b), the opponent relies on the following three trade mark registrations and all of the services covered by the same, as shown below:<sup>1</sup>

Trade mark number: UK00003702424 (“the first earlier mark”)  Trade Mark: hepsiburada.com  Filing date: 28 September 2021 Priority date: 10 August 2018 Registration date: 25 March 2022
Trade mark number: WO0000001577788 (“the second earlier mark”)  Trade Mark:   International registration date: 24 July 2020 Designation date: 24 July 2020 Date of protection of the international registration in UK: 24 September 2021.
Trade Mark number: WO0000001575442 (“the third earlier mark”)

<sup>1</sup> On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM and IR designating the EU for protection. As a result, the opponent’s earlier IRs (EU) were automatically converted into a comparable UK trade marks. Comparable UK marks are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

Trade Mark:

**hepsiglobal**

International registration date: 24 July 2020

Designation date: 24 July 2020

Date of protection of the international registration in UK: 10 June 2021

Priority date: 16 July 2020

4. The above earlier marks cover a wide range of services in classes 35, 38 and 42. The specification of the second and third earlier mark are identical and are wider than that of the first earlier mark.<sup>2</sup> The full list of services is at Annex 1.

5. The opponent claims that the marks are highly similar, that the goods and services are identical or similar, and that the opponent's earlier marks have acquired an enhanced level of distinctiveness through use. These factors, the opponent claims, will lead to a likelihood of confusion and the application should be refused under Section 5(2)(b).

6. Under Section 5(3), the opponent relies on the first and second earlier mark, which, it claims, have a reputation in relation to all of the registered services. The opponent claims that use of the applicant's mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier marks.

7. The basis of the opponent's claim in respect of Section 5(3) is set out in the Form TM7, but further details of the claim are revealed in the statement of grounds. In the latter, the opponent states that it has an extensive reputation in the mark 'hepsiburada' as a result of its continuous use since 2000 in relation to an online shopping platform and marketplace, offering more than 44 million products for sale to customers around the world, including the UK. The opponent claims to have supplied customers in the UK under the mark since 2017 at the latest, and to have received numerous awards since 2000, including "*E-Commerce Website of the Year*" and "*The Most Successful*

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<sup>2</sup> There are a few spelling differences between the specifications of the second and third earlier mark, but nothing turns on this.

*Brand of the Year in the E-Commerce Industry*". Admittedly, in its statement of grounds, the opponent refers to having reputation and goodwill in the trade mark 'hepsiburada' (both in its stylised form and in plain text), without referring to the earlier marks. However, since the Form TM7 (which accompanies the statement of grounds) lists the first and the second earlier mark in Section B (i.e. the section which deals with oppositions based on Section 5(3)), it is clear that the opponent claims to enjoy a reputation under these marks.

8. The three marks relied upon by the opponent are considered earlier marks in accordance with Section 6(1)(a) of the Act given that they were filed for registration earlier than the date of application for the contested mark. As none of the earlier marks had been registered for five years at the date the contested mark was filed, in accordance with Section 6A of the Act, they are not subject to proof of use. Consequently, the opponent may rely upon all the services it has identified for this opposition.

9. Under Section 5(4)(a) the opponent relies upon the unregistered sign 'hepsiburada'. The opponent claims to have used the sign throughout the UK since "*no later than 2017*" in relation to the following services:

*Provision of online marketplace for buyers and sellers of goods and services; retail services connected with the sale of paints, soaps, beauty products, toiletries, cleaning articles, perfumes, cosmetics, candles and scented products, pharmaceuticals, veterinary products, dietetic products, ironmongery, machines and machine tools, machines for household use, hand tools, cutlery, shaving apparatus, optical goods, cameras, electrical and electronic equipment, telephones, audio and visual equipment, computers, video game consoles and software, surgical and medical apparatus, lighting apparatus, air conditioners, heating apparatus, household appliances, white goods, kitchen and household articles, vehicle spare parts and accessories, jewellery, clocks, watches, stationery, publications, office supplies, luggage, umbrellas, furniture, mirrors, bathroom fittings and furniture, household containers and utensils, furnishings, textiles, clothing, footwear, headwear, haberdashery, toys and games, sports equipment, outdoor products, foodstuffs, drinks, pet foods, pet*

*toys, pet beds, pet harnesses and collars, and tobacco products; advertising services.*

10. The opponent claims that it has developed a substantial reputation and goodwill in the UK due to its use of the sign 'hepsiburada'. Further, the opponent claims that use of the applicant's similar mark for identical or similar goods and services will likely mislead the public into thinking that the marks are economically connected. Such a misrepresentation, the opponent claims, will cause damage to its reputation and loss of distinctiveness.

11. The applicant filed a counterstatement, in which it denied the claims made. I will return to this in a moment.

12. The opponent has been professionally represented throughout these proceedings by Marks & Clerk LLP. The applicant initially acted without professional representation, though it appointed RightPro IP & Legal Consultancy Ltd as its legal representative after it had filed a defence. Both parties filed evidence. No hearing was requested. Only the opponent filed written submissions in lieu of attendance, though I note that the applicant filed written submissions during the evidence rounds. This decision is taken following careful consideration of all the papers before me.

## **THE EVIDENCE**

13. The opponent's evidence-in-chief is given in the witness statement of Graeme Murray dated 15 September 2023. Mr Murray is a Chartered Trade Mark Attorney with the opponent's representative. His statement is accompanied by four exhibits being those labelled GM1 – GM4. He gave evidence about the opponent's alleged reputation and goodwill.

14. The applicant's evidence-in-chief is given in the witness statement of Ekin Firat Kuzu dated 4 December 2023. Mr Kuzu is the CEO of MASCA Holding Limited, a company which is said to have significant control over the applicant. He gave evidence about the applicant's business activities.

15. I do not intend to summarise the parties' evidence and submissions at this stage, but I confirm that I have given due consideration to all of the documents filed by both parties.

## **RELEVANCE OF EU LAW**

16. 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.

### **Preliminary issue: the applicant's pleadings**

17. The applicant's pleadings, as set out in the Form TM8 and counterstatement, do not address all of the claims made by the opponent. I reproduce the relevant parts of the Form TM8 below:

*"Our rejection of the opposition is based on the following grounds:*

- 1. Based on Sections 5(1) and/or 5(2) the registration of Hepsy Limited trade mark is not identical nor similar to the earlier trade marks above.*
- 2. Based on Section (3), the registration of Hepsy Limited trade mark is not identical nor similar to the earlier trade marks above or the reputation of the earlier trade marks.*
- 3. Based on Section 5(4)(a), the use of our trade mark will not be contrary to law, in particular, the law of passing off, Hepsy Limited will not be passing off the earlier trade mark's goods or services as if it is its own, or sell through misrepresentation. The Goodwill of the earlier trademarks will continue to be protected via their earlier trade mark registrations"*

18. As it can be seen from the above, the applicant denies that the applied-for mark is identical or similar to the earlier marks (under both Sections 5(2)(b) and 5(3)), and that use of the applied-for mark is contrary to the law of passing off. However, the pleadings

are totally silent about the claims that the goods and services are similar, and that the opponent enjoys goodwill and reputation in the earlier marks.

19. In its counterstatement, the applicant makes further points. It argues that the applicant is a kitchenware company based in London, whereas the opponent is an international e-commerce business and states that the applied-for mark is not going to be used in relation to the services for which the opponent has used the earlier marks, namely provision of an online marketplace for buyers and sellers of goods, retail services connected with the sale of various goods, and advertising services. The applicant concludes that *“there are no similarities or identical features of the goods and/or services or in the name of the trademark registration”* and denies that there is a likelihood of confusion *“because the nature of the businesses, the goods and services, the name has no similarity or any identical features.”*

20. Although the applicant refers to there being no similarity between the goods and services, that denial appears to be based on the comparison between the parties' business activities, identified as *“a UK based business, in the retail and wholesale of kitchenware in London specific to Local London businesses”* (i.e. the applicant) and *“an ecommerce international business, with a wider market, and very similar in nature to ebay, or amazon – selling hundreds of different types of goods and services”* (i.e. the opponent). However, the specification of the earlier marks includes services that go beyond the segment of the market in which the opponent trades, including retail services of goods identical to those for which the applicant's mark seeks registration. I do not understand the applicant's pleadings to be that the goods and services for which the applicant seeks registration and the services for which the earlier marks are registered are not similar. The written submissions subsequently filed by the applicant only appears to corroborate this conclusion. In its written submissions, the applicant, in fact, addresses the similarity of the goods and services very briefly referring, again, to the segment of the market in which each party trades, and seems to concede that some of the goods and services at issue are similar. It states (my emphasis):

*“The Applicant's business is on homeware products, such as kitchenware, textiles, cookware and small kitchen appliances. The Opponent declares that*

*they are in e-commerce business. Although some of the services are conflicting, the purpose of the trademark use is different.*”

21. Lastly, the applicant’s written submissions do not even mention the goods and services when drawing the final conclusions on the likelihood of confusion, as shown below:

*“The average consumer here is general public in the UK. The common elements of the marks are only first four letters of the marks, not even affecting the overall impression. The signs are distinctive enough that can be separated by the average UK consumer. Therefore, there will be no likelihood of confusion between the trade marks”.*

22. In *SKYCLUB*, BL-O-044/21, Mr Phillip Johnson sitting as the Appointed Person, concluded that the Hearing Officer was wrong to proceed on the basis that the similarity of goods and services was in issue in a case where the applicant had failed to plead against the similarity of the goods or services. In my view, the same approach applies in the present case. It follows that since the similarity of the goods and services has not been denied, it must be treated as admitted. This means that I could proceed on the basis that the goods and services are similar. However, as the applicant did not say to what degree it considers the goods and services to be similar (or conflicting), I will carry out my own assessment, starting from the premises that the goods and services must be similar to, at least, a low degree.

23. Turning to the claims to reputation and goodwill, the applicant states:

*“The reputation of the earlier trademark will not be impacted or affected by the registration of Hepsy Limited as a trademark in the United Kingdom; as the reputation of the earlier trademark is specific to its nature of ecommerce, which Hepsy Limited has no intention of entering. The reputation and goodwill enjoyed by hepsiburada has no connection to the registration of Hepsy Limited as a kitchenware trademark based in London selling to end customers. Where hepsiburada is an international ecommerce business providing several goods and services and understandably consumers may have learnt to associate their*

*sign of hepsiburada with the earlier trademarks; Hepsy Limited cannot be associated with the earlier trademark, and there would be no confusion between hepsiburada and Hepsy Limited, as different businesses, different customer targets, different suppliers and different nature of trade.”*

24. Whilst these statements seem to concede that that the earlier marks have a reputation in relation to an “*international ecommerce business providing several goods and services*”, in the following paragraph the applicant argues that “*there is no proof that the earlier trademark is an earlier trademark registered for as an ecommerce business*” and “*there is no proof that it has been in genuine use in the UK*”. It states:

*“Furthermore, under Section 6A (2) of the Trade Marks Act 1994 (amended February 2023), the registrar can refuse the opposition of the earlier trade mark, because it has not been proven that the conditions under the act are met for the purpose of opposition. Under the provision of Section 6A (3)a there is no proof that the earlier trademark is an earlier trademark registered for as an ecommerce business and has not necessarily been in genuine use in the United Kingdom – there is no proof that it has been in genuine use in the UK. Additionally, there are no similarities in the stylistic of the trademark registration, and there is no possibility that the opponent is likely to suffer loss as a result, including any damage to its reputation and loss of distinctiveness.”*

25. I think that these inconsistencies can be resolved by reading the applicant’s comments about reputation and goodwill as referring to the opponent’s international business activities, rather than to the reputation and goodwill deriving from the use of the earlier marks (and unregistered sign) in the UK. Further, in its written submissions, the applicant contends that the evidence filed does not establish use and reputation in the UK. Hence, I will proceed on the basis that reputation and goodwill in the UK have been denied.

## **DECISION**

### **Section 5(2)(b)**

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

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

(a)...

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

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

27. Section 5A of the Act is as follows:

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

28. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely

upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

### **Comparison of goods and services**

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

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

30. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

31. In *Gérard Meric v OHIM* Case T-133/05, the General Court (“GC”) stated that:

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

32. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

33. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different. The purpose of examining whether there is a complementary relationship between goods and services is to assess whether the relevant public are liable to believe that responsibility for the goods and services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander QC noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL O/255/13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

34. Whilst on the other hand:

“[...] it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

35. As it will be recalled, the applicant filed evidence about its business activities and argued that the differences in the goods and services effectively offered by the parties and the segments of the market in which the parties operate means that there cannot be any likelihood of confusion; in particular the applicant states that its target customers are restaurants and café owners. This is not the correct approach. First, the applicant’s specification is not limited to goods and services targeting restaurants and café owners. Secondly, and most importantly, when considering the likelihood of confusion under Section 5(2)(b) the assessment must be based on the concept of ‘notional and fair use’ which involves carrying out the comparison of the goods and services based on the specifications before me, not the goods and services effectively provided by the parties. This is the approach I will take.

36. The competing goods and services are set out at paragraph 1 and in Annex 1.

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

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

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo**

for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are 'similar' to goods are not clear cut."

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

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

related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered)."

40. I have already mentioned that the specifications of the earlier marks cover retail of goods which are identical to the goods for which the applicant seeks registration. Based on the principles set out in *Oakley* and *Waterford*, and bearing in mind the pleading point, I find as follows:

### **Class 8**

41. The contested *Spoons being tableware; Forks being tableware; Knives being tableware* in class 8 are similar to a medium degree to the opponent's *retail services in relation to cutlery, forks and spoons* in class 35 (as covered by the first earlier mark), the opponent's retail of "cutlery" including that of the applicant's goods (*Meric*).

42. Alternatively, these goods are also similar to a medium degree to the opponent's term *the bringing together, for the benefit of others, of a variety of goods, namely, forks, spoons, knives and non-electric cutters, slicers, peelers for kitchen use* in class 35 (as covered by the second and third earlier mark).

### **Class 20**

43. The contested *Glass furniture; Furniture; Furniture and furnishings; Indoor furniture; Household furniture* in class 20 are similar to a medium degree to the opponent's *retail services in relation to furniture* in class 35 (as covered by the first earlier mark), the opponent's retail of furniture including that of the applicant's goods (*Meric*).

44. Alternatively, these goods are also similar to a medium degree to the opponent's term *the bringing together, for the benefit of others, of a variety of goods, namely, furniture, made of any kind of material* (as covered by the second and third earlier mark).

45. Lastly, door furniture made of stoneware. The term “door furniture” is a term that is generally used to cover handles, knobs, etc. The specification of the second and third earlier mark covers retail services related to door handles of metal. The goods are not strictly identical, the applicant’s door handles being made of stoneware, the door handles to which the opponent’s retail services relate being made of metal. However, taking into account the pleading point and the existence of a certain degree of complementarity between the goods and services, I find that the competing goods and services are similar to a low degree.

## **Class 21**

46. The contested China mugs; mugs made of china; cups made of china; ornaments made of china; mugs of porcelain; glass tableware; porcelain mugs; decorative chinaware; Dinnerware; Tableware; Mugs made of porcelain; Ceramic hollowware; Earthenware mugs; Ceramic mugs; Teapots; Drinking mugs made of porcelain; Dishware; Glassware; Glass mugs; Glassware for household purposes; Tableware; Tableware, cookware and containers; Glass vases; Glass plates; Wine glasses; Glass storage jars; Baking dishes made of glass; Tea services [tableware]; Scoops [tableware]; Insulated lids for plates and dishes; Coffee services [tableware]; Plastic plates [dishes] in class 21 are similar to a medium degree to the opponent’s retail services in relation to kitchen and household articles, in class 35 (as covered by the first earlier mark), the opponent’s retail of kitchen and household articles including that of the applicant’s goods (*Meric*).

47. Alternatively, the contested terms *Glassware; Glass vases;* are also similar to a medium degree to the opponent’s term *the bringing together, for the benefit of others, of a variety of goods, namely, ornaments and decorative goods of glass, porcelain, earthenware or clay namely statues, figurines, vases* (as covered by the second and third earlier mark) because the goods are identical to those to which the retail services relate, the applicant’s *Glassware* including vases and other ornaments made of glass.<sup>3</sup>

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<sup>3</sup> Collins online dictionary defines Glassware as “objects made of glass, such as bowls, drinking containers, and ornaments”

48. The same goes for the contested *Dinnerware; Tableware; Teapots; Dishware; Tableware; Tableware, cookware and containers; Glass plates; Baking dishes made of glass; Tea services [tableware]; Scoops [tableware]; Plastic plates [dishes]; Coffee services [tableware]* which fall within the opponent's retail of *non-electric household or kitchen utensils, [other than forks, knives, spoons], services [dishes], pots and pans, [...] non-electric cooking utensils* (as covered by the second and third earlier mark).

49. The remaining goods, i.e. *China mugs; mugs made of china; cups made of china; ornaments made of china; mugs of porcelain; glass tableware; porcelain mugs; decorative chinaware; Mugs made of porcelain; Ceramic hollowware; Earthenware mugs; Ceramic mugs; Drinking mugs made of porcelain; Glass mugs; Glassware for household purposes; Wine glasses; Glass storage jars; Insulated lids for plates and dishes;* are mugs, drinking glasses, ornaments, jars and lids for use in the kitchen or in the house. These can all be categorised as kitchen and household articles. I find that although these goods are not identical to the goods that are the subject of the opponent's retail of *ornaments and decorative goods of glass, porcelain, earthenware or clay namely statues, figurines, vases, non-electric household or kitchen utensils, [other than forks, knives, spoons], services [dishes], pots and pans, [...] non-electric cooking utensils,* taking into account the pleading point and the existence of a certain degree of complementarity between the goods and services, these goods are also similar to a low degree to the specification of the second and third earlier mark.

#### **Class 24**

50. The contested *Household textiles; Household textile goods* in class 24 are similar to a medium degree to the opponent's *retail services in relation to home textile* in class 35 (as covered by the first earlier mark), the opponent's retail of home textile including that of the applicant's goods (*Meric*).

51. Alternatively, these goods are also similar to a medium degree to the opponent's term *the bringing together, for the benefit of others, of a variety of goods, namely, textile goods for household use* (as covered by the second and third earlier mark).

#### **Class 35**

52. The contested Retail services connected with the sale of furniture; Retail services relating to furniture; Retail services in relation to furniture; Retail services in relation to furnishings; Retail services relating to home textiles; Retail services in relation to cookware; Retail services in relation to tableware; Retail services in relation to kitchen appliances; Retail services relating to kitchen knives; Retail services in relation to domestic electronic equipment are identical to the opponent's retail services which cover the retail of identical goods (as covered by three earlier marks).

53. Whilst the first earlier mark covers only retail services, the second and third earlier mark contain the following text "such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues" and cover wholesale services relating to goods which are identical to those covered by the applicant's Wholesale services relating to furniture; Wholesale services in relation to furniture; Wholesale services in relation to furnishings; Wholesale services in relation to kitchen appliances; Wholesale services in relation to food cooking equipment; Wholesale services in relation to cutlery; Wholesale services relating to kitchen appliances; Wholesale services in relation to kitchen knives. It follows that the contested wholesale services are identical to the wholesale services of the second and third earlier marks. They are also highly similar to the retail services of the first earlier mark, as wholesale and retail services relating to identical goods have a similar nature, purpose, and method of use (as they are both aimed at selling the same goods to businesses and members of the public respectively) and share trade channels, since it is not unusual for wholesalers to also sell their goods to the general public.

### **Average consumer**

54. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

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

55. The average consumer for the parties’ goods and services will be a member of the general public or a business user. When selecting the goods and services, the consumer will take a number of factors into account such price, quality and functionality (for the goods) and stocks available, price and location (for the services). Consequently, I consider that a medium degree of attention will be paid during the purchasing process for the goods and services.

56. The goods are likely to be selected from the shelves of retail outlets or following the perusal of marketing material (or their online equivalents). The services are likely to be selected from physical signage, websites or promotional material. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that aural components may play a part as word-of-mouth recommendations may be made.

### **Comparison of marks**

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

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means

of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

59. The respective marks are shown below:

The applicant’s mark	The opponent’s mark
	<p data-bbox="794 969 1043 1003">hepsiburada.com</p> 

60. The parties have made submissions on the similarities and differences between the marks. The applicant states:

*“The overall impression of the marks are different since the applicant’s mark, due to the dissimilarity of the signs.*

*Visual Comparison:*

*The trademarks are visually different as only first four letters of the Opponent’s long marks are common and the Applicant has different colour combination and stylization, additional to the last letter “y”.*

*Aural Comparison: The applicant’s mark is pronounced different for the self-explanatory reasons.*

*Conceptual Comparison: The Applicant’s mark does not have any meaning. Even though the Opponent’s marks mean “everything is here”, “everything is*

*global” in Turkish language, UK consumers would not be able to understand it, therefore, it can be suggested that they also do not mean anything. As both parties’ marks do not have any meanings, there is no conceptual similarity between the marks.”*

61. The opponent states that the marks are visually and aurally highly similar because they all begin with the letters “HEPS” and the sounds of the elements “HEPSY” in the applicant’s mark and “hepsi” in the opponent’s marks are identical. The opponent also states that in respect of the third earlier mark “hepsiglobal” the similarity is arguably higher based on the fact that element “global” is a relatively non-distinctive term. I agree with the opponent that its best case rests on its third earlier mark and it is this mark that I will compare with the applicant’s mark. I now turn to the overall impression.

## **Overall impression**

### *The applicant’s mark*

62. The applicant’s mark consists of the word ‘Hepsy’ presented in title case, in a white slightly stylised font on a red rectangular background. The mark also includes small registered trade mark symbol ®. The overall impression of the mark is dominated by the word itself, with the colour and stylisation playing a lesser role, whereas the ® symbol will be perceived as a notice that the preceding word is a trade mark that has been registered with a national trade mark office and will have no weight in the overall impression.

### *The third earlier mark*

63. The third earlier mark consists of the conjoined words ‘hepsi’ and ‘global’ presented in low-case letters, with the word ‘hepsi’ in orange and the word ‘global’ in shades of blue, yellow, orange, green and light blue. The use of different colours and the obvious meaning of the word “global” will lead the public to split mentally the mark into the two elements ‘hepsi’ and ‘global’. The applicant indicates that the word ‘hepsi’ is a Turkish word, however, there is no evidence that a significant proportion of the UK public will

understand its meaning; hence, it will be perceived by the UK public as an invented word with a high degree of distinctiveness. The word 'global' will be given its ordinary dictionary meaning and may be seen by the average consumer to allude to a worldwide business. The word 'global' will, therefore, have less trade mark significance. Further, the fact that the word 'hepsi' is inherently highly distinctive and it is placed at the beginning of the mark means that the rule of thumb that consumers tend to focus on the beginning of marks is applicable in this case. The upshot is that the word 'hepsi' will play a greater role than the word 'global' in the overall impression of the mark.

### **Visual similarity**

64. Visually, the marks overlap to the extent that they both contain the letters 'heps'. In the applicant's mark the letters 'heps' are followed by the letter 'y' forming the word 'hepsy', whereas in the opponent's mark are followed by the letter 'i' forming the word 'hepsi'. The dominant and distinctive element of the marks, namely the words 'hepsy' and 'hepsi', coincide in four out of five letters placed in the same order, and differ in their last letter only. I consider these elements to be visually similar to a high degree. The colours (both of the text and the background) are points of visual difference, as is the word 'global' in the opponent's mark, however, these elements are less distinctive than the similar words 'hepsy' and 'hepsi'. In my view, the marks are visually similar to between a medium and high degree.

### **Aural similarity**

65. Aurally, the words 'hepsy' and 'hepsi' will be pronounced identically in both marks. The word 'global' in the opponent's mark is a point of aural difference. I consider the marks to be aurally similar to a high degree.

### **Conceptual similarity**

66. Conceptually, neither the word 'hepsy' or 'hepsi' has a meaning in English; both words will be perceived as invented with no immediate conceptual meaning. The word 'global' is likely to be seen as indicating an international business. Whilst it therefore

acts as a point of conceptual difference, it is not a distinctive one. I do not consider that any conceptual message will be conveyed by the colour/stylisation elements.

### **Distinctive character of earlier mark**

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

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

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

68. Registered trade marks possess various degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

69. The verbal element of the third earlier mark consists of the conjoined words 'hepsi' and 'global'. As it will be recalled, I have concluded that the word 'hepsi' will be perceived as an invented term having a high degree of distinctiveness. Although the mark contains other verbal and figurative elements, they are not very distinctive and, in my view, do not materially increase the distinctiveness of the mark as whole. The third earlier mark is inherently distinctive to a high degree.

70. I will now consider whether the distinctiveness of the third earlier mark has been enhanced through use.

71. Mr Murray gave evidence that the opponent's business relates to an online shopping platform and marketplace that offers over 44 million products to customers around the world, including to the UK since at least as early as 2017. Whilst Mr Murray says that the opponent is "*one of the world's most successful e-commerce businesses*", it did not provide any UK specific evidence about the opponent's commercial activities, revenue and promotional spend. Mr Murray's evidence clearly focuses on the reputation of the opponent in Turkey and outside the UK reporting on the fact that the opponent became the first and only Turkish company to have been floated on the US stock market (2021) and the national team sponsor of the Turkish Basketball Federation (2023). Likewise, the evidence that in 2018 the opponent generated \$786 million in annual revenues does not say what proportion of that revenue was generated by UK sales. Since all of the evidence provided is about the opponent's commercial activities outside the UK, it cannot establish that the earlier marks have acquired a reputation, or an enhanced degree of distinctiveness through use in the UK.

### **Likelihood of confusion**

72. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the

average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

73. Confusion can be direct or indirect. The difference between these two types of confusion was explained in *L.A. Sugar Trade Mark*, BL O/375/10, where Iain Purvis Q.C. (as he then was) as the Appointed Person explained that:

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

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

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

- c. where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

74. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis’s formulation but added:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] ‘a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion’. Mr Mellor went on to say that, if there is no likelihood of direct confusion, ‘one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion’. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

75. Earlier in this decision I found that some of the competing services are identical, whereas other goods and services are similar to a low and a medium degree. The goods and services will be selected visually (though I do not discount aural considerations completely) with a medium degree of attention. The applicant’s mark and the third earlier mark are visually similar to between a medium and high degree, and aurally similar to a high degree. Conceptually, the elements ‘hepsy’ and ‘hepsi’ will be perceived as invented words and will convey no concept, whereas the difference created by the word ‘global’ is not a distinctive one. The third earlier mark is distinctive to a high degree, with most of its distinctiveness resting in the verbal element ‘hepsi’ which is highly similar to the dominant element ‘hepsy’ of the applicant’s mark. I keep all these findings in mind when considering whether a likelihood of confusion exists.

76. Given the strong visual and phonetic similarity of the elements ‘hepsy’ and ‘hepsi’ which have no immediate conceptual meaning, my conclusion is that there is a likelihood of direct confusion between the marks at issue on the part of the relevant public with respect to all of the goods and services, including those which I found to be similar to a lower degree. I consider that the marks may be mistakenly recalled or

misremembered as each other as the average consumer is likely to confuse the elements 'hepsy' and 'hepsi' in the respective marks, with the non-distinctive 'global' element and the differing colour (and minor differences in stylisation) being overlooked or forgotten by the average consumer. Consequently, I consider there to be a likelihood of direct confusion.

77. Even if I am wrong in this finding, I consider that the marks are likely to be viewed as alternative marks being used by the same undertaking. The addition of the word 'global' is likely to be seen as indicating an international arm of the business. To the extent that they are recalled at all, the differences in colour (and, to a lesser degree, font) may be seen as an alternative mark being used by the same business to reflect this. I consider there to be a likelihood of indirect confusion.

78. As I have found in favour of the opponent on the basis of the third earlier mark, I do not need to consider the opposition based upon the first and second earlier mark. The opposition based upon Section 5(2)(b) of the Act succeeds in its entirety.

### **Section 5(3)**

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

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom 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.”

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

- (a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24*.
- (b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.
- (c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29* and *Intel, paragraph 63*.
- (d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*.
- (e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.
- (f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* 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 proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

81. The relevant date for the assessment under Section 5(3) is the filing date of the application at issue, being 01 February 2023.

### Reputation

82. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

83. I can deal with this ground relatively swiftly.

84. For the same reasons given above, I am not satisfied that the evidence filed is sufficient to establish that the opponent had the requisite reputation in the UK at the relevant date. In its submissions in lieu, the opponent states:

*"The evidence filed reflects an international reputation associated with the opponent's marks relied upon under these grounds, which clearly flows into the UK by virtue of the significant size and success of the Opponent's business under the relevant marks. The website is a .com website, accessible by UK consumers, and reflects trade and goodwill in the UK."*

85. The case-law set-out above clearly states that the requirement of reputation must be satisfied "**territorially**". The relevant territory in this case is the UK. The webpages exhibited in evidence are in Turkish, which indicates that the website is not targeted at the UK consumers and there is no indication of the number of UK visitors to the website in question. In any event, the fact that a business might have a reputation outside the UK is not sufficient to establish a reputation in the UK. The opposition based on Section 5(3) fails at the first hurdle.

#### **Section 5(4)(a)**

86. Section 5(4)(a) states:

“(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.”

87. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “a substantial number” of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

88. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at 223:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

89. Again, I can deal with this ground relatively swiftly. There is no evidence of the opponent having any customers in the UK and the complete absence of evidence about UK sales figures and UK marketing activity means that the opponent has failed to establish a *prima facie* case that it has any reputation or goodwill in this country. For the same reasons given above, I am not satisfied that the opponent has demonstrated a protectable goodwill in the UK. The opposition based upon Section 5(4)(a) is also dismissed.

## **OUTCOME**

90. The opposition succeeds in its entirety and the applicant’s mark is hereby, subject to any successful appeal against my decision, refused registration for all of the goods and services.

## **COSTS**

91. The opponent has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £1,500, calculated as follows:

Preparing a notice of opposition:	£300
Filing evidence and reviewing the other party’s evidence:	£600
Written submissions:	£400
Official fees:	£200
Total	£1,500

92. I therefore order HEPSY LIMITED to pay D-Market Elektronik Hizmetler ve Ticaret Anonim Sirketi the sum of £1,500. This sum is to 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 05 day of September 2024

TERESA PERKS  
For the Registrar

## Annex 1

Trade mark number: UK00003702424

Trade Mark: hepsiburada.com

Filing date: 28 September 2021

Priority date: 10 August 2018

Registration date: 25 March 2022

Goods and services:

**Class 35:** *Advertising; business management; business administration; office functions; online marketing services; retail services in relation to paints and lacquers, soaps, cleaning articles, perfumes and beauty care products, pharmaceutical, veterinary and dietetic products for humans and animals, ironmongery, machines and machine tools, tools and handheld instruments, cutlery, forks and spoons, shaving machines, textile goods, clothing, household appliances, electronic apparatus and instruments, telephones, records and discs, computers, surgical apparatus, orthopedic articles, lighting apparatus, home appliances, kitchen and household articles, vehicles and vehicle spare parts and accessories, jewelry and imitation jewelry, watches and clocks, musical instruments, paper and cardboard articles, writing articles, stationery goods, bags and suitcases, umbrellas, furniture, mirrors, containers, threads, textile articles, clothing, footwear, headgear, carpets, games and playthings, foodstuff, beverages, tobacco and smokers' articles, cameras, printers, projectors, cell phone and cell phone accessories, televisions, sound systems, home appliances, kitchen and domestic appliances, air conditioners, heaters, game consoles, pc and video games, furnitures, home textile, office supplies, bathroom wares, generators, bathroom furnitures, diapers, outdoor products, cosmetics, pet foods, pet toys, pet beds, pet harnesses, pet collars and pet leads, books, magazines, music albums' articles.*

**Class 38:** *Telecommunications.*

**Class 42:** *Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.*

Trade mark number: WO0000001577788

Trade Mark:

**hepsiburada**

International registration date: 24 July 2020

Designation date: 24 July 2020

Date of protection of the international registration in UK: 24 September 2021.

Goods and services:

**Class 35:** *Advertising, marketing and public relations; organization of exhibitions and trade fairs for commercial or advertising purposes; development of advertising concepts; provision of an online marketplace for buyers and sellers of goods and services; office functions; secretarial services; arranging newspaper subscriptions for others; compilation of statistics; rental of office machines; systemization of information into computer databases; telephone answering for unavailable subscribers; business management, business administration and business consultancy; accounting; commercial consultancy services; personnel recruitment, personnel placement, employment agencies, import-export agencies; temporary personnel placement services; auctioneering; the bringing together, for the benefit of others, of a variety of goods, namely, chemicals used in industry, science, photography, agriculture, horticulture and forestry, manures and soils, unprocessed artificial resins and unprocessed plastics, fire extinguishing compositions, adhesives not for medical, household and stationery purposes, paints, varnishes, lacquers, preservatives against rust, preservatives against deterioration of wood, thinners and binders for paints, pigments, preservatives for metals, shoe dyes, printing dyes and ink, toners (including filled toner cartridges), colorants for food, pharmaceuticals and beverages, raw natural resins, metals in foil and powder form for painters, decorators, printers and artists, bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents, perfumery, non-medicated cosmetics, fragrances, deodorants for personal use and animals, soaps, dental care preparations: dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes, abrasive preparations, emery cloth, sandpaper, pumice stone, abrasive pastes, polishing preparations for leather, vinyl, metal and*

wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing, industrial oils and greases, cutting fluids, dust absorbing, wetting and binding compositions, solid fuels, coal, firewood, liquid and gas fuels, petrol, diesel oil, liquified petroleum gas, natural gas, fuel oil and their non-chemical additives, candles, wicks, semi-finished wax, wax and paraffin for lighting purposes, electrical energy, pharmaceutical and veterinary preparations for medical purposes, chemical preparations for medical and veterinary purposes, chemical reagents for pharmaceutical and veterinary purposes, medicated cosmetics, dietary supplements for pharmaceutical and veterinary purposes, dietary supplements, nutritional supplements, medical preparations for slimming purposes, food for babies, herbs and herbal beverages adapted for medicinal purposes, dental preparations and articles: teeth filling material, dental impression material, dental adhesives and material for repairing teeth, sanitary preparations for medical use, hygienic pads, hygienic tampons, plasters, materials for dressings, diapers made of paper and textiles for babies, adults and pets, preparations for destroying vermin, herbicides, fungicides, preparations for destroying rodents, deodorants, other than for human beings or for animals, air purifying preparations, air deodorising preparations, disinfectants, antiseptics, detergents for medical purposes, medicated soaps, disinfectant soaps, antibacterial hand lotions, ores of non-precious metal, common metals and their alloys and semi-finished products made of these materials, irons for construction, mats and stirrups of common metals for buildings, common metals in the form of plate, billet, stick, profile, sheet and sheeting, goods and materials of common metal used for storage, wrapping, packaging and sheltering purposes, containers of metal (storage, transport), buildings of metal, frames of metal for building, poles of metal for building, metal boxes, packaging containers of metal, aluminium foil, fences made of metal, guard barriers of metal, metal tubes, storage containers of metal, metal containers for the transportation of goods, ladders of metal, goods of common metal for filtering and sifting purposes, doors, windows, shutters, jalousies and their cases and fittings of metal, non-electric cables and wires of metal, ironmongery, small hardware of metal, screws of metal, nails, bolts of metal, nuts of metal, pegs of metal, flakes of metal, pitons of metal, metal chains, furniture casters of metal, fittings of metal for furniture, industrial metal wheels, door handles of metal, window handles of metal, hinges of metal, metal latches, metal locks, metal keys for locks, metal rings, metal pulleys,

*ventilation ducts, vents, vent covers, pipes, chimney caps, manhole covers, grilles of metal for ventilation, heating, sewage, telephone, underground electricity and air conditioning installations, metal panels or boards (non-luminous and non-mechanical) used for signalling, route showing, publicity purposes, signboards of metal, advertisement columns of metal, signaling panels of metal, non-luminous and non-mechanical traffic signs of metal, pipes of metal for transportation of liquids and gas, drilling pipes of metal and their metal fittings, valves of metal, couplings of metal for pipes, elbows of metal for pipes, clips of metal for pipes, connectors of metal for pipes, safes (strong boxes) of metal, metal railway materials, metal rails, metal railway tics, railway switches, bollards of metal, floating docks of metal, mooring buoys of metal, anchors, metal moulds for casting, other than machine parts, works of art made of common metals or their alloys, trophies of common metal, metal closures, bottle caps of metal, metal poles, metal pillars, scaffolding of metal, metal stakes, metal towers, metal pallets and metal ropes for lifting, loading and transportation purposes, metal hangers, ties, straps, tapes and bands used for load-lifting and load-carrying, wheel chocks made primarily of metal, metal profile laths for vehicles for the purposes of decoration, machines, machine tools and industrial robots for processing and shaping wood, metals, glass, plastics and minerals, 3d printers, construction machines and robotic mechanisms (machines) for use in construction: bulldozers, diggers (machines), excavators, road construction and road paving machines, drilling machines, rock drilling machines, road sweeping machines, lifting, loading and transmission machines and robotic mechanisms (machines) for lifting, loading and transmission purposes: elevators, escalators and cranes, machines and robotic mechanisms (machines) for use in agriculture and animal breeding, machines and robotic mechanisms (machines) for processing cereals, fruits, vegetables and food, machines for preparing and processing beverages, engines and motors, other than for land vehicles, parts and fittings therefor: hydraulic and pneumatic controls for engines and motors, brakes other than for vehicles, brake linings for engines, crankshafts, gearboxes, other than for land vehicles, gearboxes, cylinders for engines, pistons for engines, turbines, not for land vehicles, fillers for engines and motors, oil, air and fuel fillers for land vehicle engines, exhausts for land vehicle engines, exhaust manifolds for land vehicle engines, engine cylinders for land vehicles, engine cylinder heads for land vehicles, pistons for land vehicle engines, carburetors for land vehicles,*

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

*including those for scientific, nautical, thopographic, meteorologic, industrial and laboratory purposes, thermometers, not for medical purposes, barometers, ammmeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses, speed indicators, laboratory apparatus, microscopes, magnifying glasses, stills, binoculars, ovens and furnaces for laboratory experiments, apparatus for recording, transmission or reproduction of sound or images, cameras, photographic cameras, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, wearable technological devices (smart watches, wristbands, head-mounted devices) microphones, loudspeakers, earphones, telecommunications apparatus, apparatus for the reproduction of sound or images, computer peripheral devices, cell phones, covers for cell phones, telephone apparatus, computer printers, scanners [data processing equipment], photocopiers, magnetic and optic data carriers and computer software and programmes recorded thereto, downloadable and recordable electronic publications, encoded magnetic and optic cards, movies, tv series and video music clips recorded on magnetic, optical and electronic media, antennas, satellite antennas, amplifiers for antennas, parts of the aforementioned goods, ticket dispensers, automatic teller machines (atm), electronic components used in the electronic parts of machines and apparatus, semi-conductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors, counters and quantity indicators for measuring the quantity of consumption, automatic time switches, clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment, eyeglasses, sunglasses, optical lenses and eases, containers, parts and components thereof, apparatus and instruments for conducting, transforming, accumulating or controlling electricity, electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, battery starter cables, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators, solar panels for production of electricity, alarms and anti-theft alarms, other than for vehicles, electric bells, signalling apparatus and instruments, luminous or mechanical signs for traffic use, fire*

*extinguishing apparatus, fire engines, fire hose and fire hose nozzles, radar apparatus, sonars, night vision apparatus and instruments, decorative magnets, metronomes, surgical, medical, dental and veterinary apparatus and instruments, furniture especially made for medical purposes, artificial limbs and prostheses, medical orthopaedic articles: corsets for medical purposes, orthopaedic shoes, elastic bandages and supportive bandages, surgical gowns and surgical sterile sheets, adult sexual aids, condoms, babies' bottles, babies' pacifiers, teats, teethers for babies, bracelets and rings for medical purposes, anti-rheumatism bracelets, anti-rheumatism rings, lighting installations, lights for vehicles and interior-exterior spaces, healing installations using solid, liquid or gas fuels or electricity, central heating boilers, boilers for heating installations, radiators [heating], heat exchangers, not parts of machines, stoves, kitchen stoves, solar thermal collectors [heating], steam, gas and fog generators, steam boilers, other than parts of machines, acetylene generators, oxygen generators, nitrogen generators, installations for air-conditioning and ventilating, cooling installations and freezers, electric and gas-powered devices, installations and apparatus for cooking, drying and boiling: cookers, electric cooking pots, electric water heaters, barbecues, electric laundry driers, hair driers, hand drying apparatus, sanitary installations, taps [faucets], shower installations, toilets [water-closets], shower and bathing cubicles, bath tubs, toilet seats, sinks, wash-hand basins [parts of sanitary installations], washers for water taps, stuffings (tap valves), water softening apparatus, water purification apparatus, water purification installations, waste water purification installations, electric bed warmers and electric blankets, not for medical use, electric pillow warmers, electric or non-electric footwarmers, hot water bottles, electrically heated socks, filters for aquariums and aquarium filtration apparatus, industrial type installations for cooking, drying and cooling purposes, pasteurizers and sterilizers, motor land vehicles, motorcycles, mopeds, engines and motors for land vehicles, clutches for land vehicles, transmissions, transmission belts and transmission chains for land vehicles, gearing for land vehicles, brakes, brake discs and brake linings for land vehicles, vehicle chassis, automobile bonnets, vehicle suspension springs, shock absorbers for automobiles, gearboxes for land vehicles, steering wheels for vehicles, rims for vehicle wheels, bicycles and their bodies, handlebars and mudguards for bicycles, vehicle bodies, tipping bodies for trucks, trailers for tractors, frigorific bodies for land vehicles, trailer hitches for vehicles,*

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

*from these materials in the form of powder, bars, panels and foils, insulation, stopping and sealing materials: insulation paints, insulation fabrics, insulating tape and band, insulation covers for industrial machinery, joint sealant compounds for joints, gaskets, o-rings for sealing purposes (other than gaskets for motors, cylinders and washer for water taps), flexible pipes made from rubber and plastic, hoses made of plastic and rubber, including those used for vehicles, junctions for pipes of plastic and rubber, pipe jackets of plastic and rubber, hoses of textile material, junctions for pipes, not of metal, pipe jackets, not of metal, connecting hose for vehicle radiators, profile laths made of synthetic materials for vehicles for the purposes of decoration, unworked or semi-worked leather and animal skins, imitations of leather, stout leather, leather used for linings, goods made of leather, imitations of leather or other materials, designed for carrying items, bags, wallets, boxes and trunks made of leather or stout leather, keycases, trunks [luggage], suitcases, umbrellas, parasols, sun umbrellas, walking sticks, whips, harness, saddlery, stirrups, straps of leather (saddlery), sand, gravel, crushed stone, asphalt, bitumen, cement, gypsum, plaster, concrete, marble blocks for construction, building materials (as finished products) made of concrete, gypsum, clay, potters' clay, stone, marble, wood, plastics and synthetic materials for building, construction, road construction purposes, non-metallic buildings, non-metallic building materials, poles not of metal for power lines, barriers not of metal, natural and synthetic coatings in the form of panels and sheets, being building materials, bitumen cardboard coatings for roofing, bitumen coating for roofing, doors and windows of wood and synthetic materials, traffic signs not of metal, non-luminous and non-mechanical, for roads, monuments and statuettes of stone, concrete and marble, building glass, prefabricated swimming pools not of metal (structures), aquarium sand, furniture, made of any kind of material, mattresses, pillows, air mattresses and cushions, not for medical purposes, water beds, mirrors, beehives, artificial honeycombs and sections of wood for honeycombs, bouncing chairs for babies, playpens for babies, cradles, infant walkers, display boards, frames for pictures and paintings, identification plates, identification tags, nameplates, identification labels made of wood or synthetic materials, packaging containers of wood or plastics, casks for use in transportation or storage, barrels, storage drums, tanks, boxes, storage containers, transportation containers, chests, loading pallets and closures for the aforementioned goods, of wood or plastics, small hardware goods of wood or synthetic*

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

swaddling blankets, sleeping bags for camping, clothing, including underwear and outerclothing, other than special purpose protective clothing, socks, mufflers [clothing], shawls, bandanas, scarves, belts [clothing], footwear, shoes, slippers, sandals, headgear, hats, caps with visors, berets, caps [headwear], skull caps, laces and embroidery, guipures, festoons, ribbons (haberdashery), ribbons and braid, fastening tapes for clothing, cords for clothing, letters and numerals for marking linen, embroidered emblems, badges for wear, not of precious metal, shoulder pads for clothing, buttons for clothing, fasteners for clothing, eyelets for clothing, zippers, buckles for shoes and belts, fasteners, shoe and belt buckles, pins, other than jewellery, adhesive patches for decoration of textile articles, laces, needles, sewing needles, needles for sewing machines, needles for knitting and embroidery, boxes for needles, needle cushions, artificial flowers, artificial fruits, hair pins, hair buckles, hair bands, decorative articles for the hair, not made of precious metal, wigs, hair extensions, electric or non-electric hair curlers, other than hand implements, carpets, rugs, mats, prayer rugs, linoleum, artificial turf, linoleum for covering floors, gymnasium mats, wallpaper, wall hangings not of textile, games and toys, arcade video game machines, game apparatus and machines for use with an external display screen and monitor, including those coin-operated, toys for animals, toys for outdoor playgrounds, parks and game parks, gymnastic and sporting articles, fishing tackle, artificial fishing bait, decoys for hunting and fishing, Christmas trees of artificial material, ornaments for Christmas trees, artificial snow for Christmas trees, rattles (playthings), novelties for parties, dances (party favors), paper party hats, meat, fish, poultry and game, processed meat products, dried pulses, soups, bouillon, processed olives, olive paste, milks of animal origin, milks of herbal origin, milk products, butter, edible oils, dried, preserved, frozen, cooked, smoked or salted fruits and vegetables, tomato paste, prepared nuts and dried fruits as snacks, hazelnut spreads and peanut butter, tahini (sesame seed paste), eggs and powdered eggs, potato chips, coffee, cocoa, coffee or cocoa based beverages, chocolate based beverages, pasta, stuffed dumplings, noodles, pastries and bakery products based on flour, desserts based on flour and chocolate, bread, simit [Turkish ring-shaped bagel covered with sesame seeds], poğaça [Turkish bagel], pita, sandwiches, katmer [Turkish pastry], pies, cakes, baklava [Turkish dessert based on dough coated with syrup], kadayif [Turkish dessert based on dough], desserts based on dough coated with syrup, puddings, custard,

*kazandibi [Turkish pudding], rice pudding, keşkül [Turkish pudding], honey, bee glue for human consumption, propolis for food purposes, condiments for foodstuff, vanilla (flavoring), spices, sauces (condiments), tomato sauce, yeast, baking powder, flour, semolina, starch for food, sugar, cube sugar, powdered sugar, tea, ice tea, confectionery, chocolate, biscuits, crackers, wafers, chewing gums, ice-cream, edible ices, salt, cereal-based snack food, popcorn, crushed oats, corn chips, breakfast cereals, processed wheat for human consumption, crushed barley for human consumption, processed oats for human consumption, processed rye for human consumption, rice, molasses for food, agricultural and horticultural product, seeds, forestry products, live animals, fertilized eggs for hatching, plants, dried plants for decoration, fresh garden herbs, dried garden herbs for decoration, animal foodstuffs, malt not for human consumption, underlays for pets, cat litters, beers, preparations for making beer, mineral water, spring water, table water, soda water, fruit and vegetable juices, fruit and vegetable concentrates and extracts for making beverages, non-alcoholic soft drinks, energy drinks, protein-enriched sports beverages, alcoholic beverages (except beers), wines, raki [traditional Turkish alcoholic drink], whisky, liqueurs, alcoholic cocktails, tobacco, chewing tobacco, cigarettes, cigars, smokers' articles including those made of precious metals: pipes, mouthpieces for cigars and cigarettes, ashtrays, tobacco boxes, pocket apparatus for rolling cigarettes, cigarette paper, tobacco pipes, firestones, lighters for smokers, electronic cigarettes and their cartridges, matches, enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores, wholesale outlets, by means of electronic media or through mail order catalogues.*

**Class 38:** *Radio and television broadcasting services; telecommunication services; providing access to internet; news agencies.*

**Class 42:** *Scientific and industrial analysis and research services; engineering; engineering and architectural design services; testing services for the certification of quality and standards; computer services, namely, computer programming, computer virus protection services, computer system design, creating, maintaining and updating websites for others, computer software design, updating and rental of computer software, providing search engines for the internet, hosting websites, consultancy in*

*the design and development of computer hardware, rental of computer hardware; industrial design services, other than engineering, computer and architectural design; graphic arts designing; authenticating works of art.*

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Trade Mark:



hepsiglobal

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