BL O/0971/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NUMBER 4141917

BY WYNTEX LLC

TO REGISTER THE TRADE MARK:

Love Your Pet, Love Your Planet

IN CLASSES 18, 20 AND 21

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NUMBER 454206

BY TANGLE ANGEL LIMITED

BACKGROUND AND PLEADINGS

1. On 29 December 2024, Wyntex LLC ("the Applicant") applied to register in the UK the trade mark shown on the cover page of this decision, under number 4141917 ("the contested mark"). The contested mark was published in the Trade Marks Journal for opposition purposes on 14 March 2025 in respect of the following goods:

   Class 18: Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Clothing for pets; Collars for animals; Hiking sticks; Leather leashes; Muzzles; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.

   Class 20: Bedding, except linen; Beds; Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dog kennels; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Beds for household pets; Camping mattresses; Kennels for household pets; Nesting boxes for household pets; Pet cushions; Sleeping pads; Wardrobes; Washstands [furniture].

   Class 21: Dustbins; Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chamber pots; Chopsticks; Coffeepots, non-electric; Earthenware; Grill supports; Litter boxes for pets; Towel rails and rings; Cages for household pets; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils; Pet feeding bowls; Pet feeding bowls, automatic.

2. On 14 May 2025, Tangle Angel Limited, ("the Opponent") filed a notice of opposition, opposing the application in full, under section 5(2)(b) of the Trade

Marks Act 1994 ("the Act").[1] The Opponent relies upon the following trade mark registrations ("the Earlier Marks"):

First Earlier Mark: **Love your Pet - Love your Planet**

UK registration number: 3474976

Filing date: 13 March 2020

Registration date: 9 August 2020

Goods relied upon:

Class 21: Combs for the hair (Large-toothed-); Electric hair combs; Electric rotary hair brush for styling a user's hair; Hair brushes; brushes for use in detangling hair; Hair combs; Hair for brushes; Hairbrushes; Brush holders; Brushes; Brushes for cleaning; Brushes (Electric-), except parts of machines; Brushes for pets; Brushes for personal hygiene, Brushes for grooming pet animals; Brushes for grooming horses; Mane brushes [horse combs]; Horse brushes of wire; Horse brushes; parts, fittings and accessories all for the aforesaid goods.

Second Earlier Mark: **Love your Hair - Love your Planet**

UK registration number: 3474973

Filing date: 13 March 2020

Registration date: 9 August 2020

Goods relied upon:

[1] The opposition was originally filed under both section 5(2)(b) and section 5(4)(a). However, as the opponent did not file any evidence in support of the 5(4)(a) grounds by the given deadline, the ground was removed. The parties were notified, and it was confirmed in the Tribunal's letter dated 30 December 2025 that the opposition proceedings would continue under the 5(2)(b) grounds only.

Class 21: Hair Brushes, Hair Combs, Hair for Brushes, Household Utensils, Horse Brushes, Brushes for Grooming Pet Animals, Brushes for household use, Brushes for personal hygiene, Brushes for the hair, Brushes, electric [except parts of machines].

3. In its notice of opposition, the Opponent claims that the Applicant's mark is highly similar to the Opponent's marks and covers similar goods.[2]

4. The Applicant filed a defence and counterstatement denying the grounds of the opposition.[3]

5. Both of the marks identified in paragraph [2] are earlier marks, in accordance with section 6 of the Act. However, as they had not been registered for five years or more at the filing date of the application, they are not subject to the use requirements specified within section 6A of the Act. As a consequence, the Opponent may rely upon all of the goods for which the earlier marks are registered without having to establish genuine use.

6. The Opponent is represented by Pawel Wowra and the Applicant is represented by Best IP Ltd. Neither party chose to file evidence. Both parties were given the option of an oral hearing but neither requested to be heard on this matter and neither party filed written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

RELEVANCE OF EU LAW

7. 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

[2] Form TM7 and statement of grounds, paragraph 5.
[3] Form TM8 and counterstatement, page 6.

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 MATTERS

8. Both parties have raised points in their pleadings that I intend to address as preliminary issues. Before going further into the substantive merits of these proceedings, it is necessary to explain, why, as a matter of law, these points will have no bearing on the outcome of this opposition.

Goods comparison and target market

9. The Applicant argues within its counterstatement that:

> "*The Opponent's products, being brushes for hair and grooming, are typically sold through: Hair salons, professional beauty wholesalers, or B2B grooming equipment distributors; Their marketing and brand presence is focused on personal grooming professionals or wholesale clients.*
>
> *In contrast, the Applicant's products are; Designed for individual pet owners, targeting retails consumers through pet stores, e-commerce platforms, and direct-to-consumer channels; Catered to pet lifestyle, animal wellbeing, and domestic pet care – an entirely different consumer mindset and purchasing motivation.*
>
> *Given these stark differences, it is highly unlikely that a consumer will encounter both brands in the same retail environment or mistakenly believe they originate from the same source. The purchasing context, product functionality, and consumer profile diverge significantly."*

10. While I note the applicant's above submissions, marketing strategies, including the targeting of specific consumers, are temporary and may change over time, I must make my assessment based on how the goods might fairly be used now or in the

future: *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P at [59]. As such, it is not appropriate to take marketing factors into account in my assessment of the goods themselves. I will, however, make an assessment later in this decision, as to who the average consumer could be for the goods at issue.

Family of Marks

11. In paragraphs 18 and 19 of its statement of grounds, the Opponent refers to its earlier marks as a family of marks, with a clear, repeated conceptual structure, and that this structure forms part of the Opponent's brand family. As established in *Il Ponte Finanziaria SpA v OHIM* ("*Bainbridge*"), case C-234/06 P, EU:C:2007:514[4], a family of marks exists where the relevant public is able to recognise a series of marks sharing common characteristics and perceive those characteristics as indicating a common commercial origin. In the absence of evidence that shows the average consumer would recognise the earlier marks as a family, I will assess the likelihood of confusion by comparing the applied-for mark with the earlier marks as required.

DECISION

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

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

> "5(2) A trade mark shall not be registered if because–
>
> (a)…
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

[4] Paragraphs [62,64].

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

13. Section 5A states:

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

14. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 the earlier mark to mind, is not sufficient;

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

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

Comparison of goods

15. Pursuant to section 60A of the Act, goods and/or services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

16. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

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

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

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

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

18. Where the goods in the specification of one party are included in a broader term from the other party's specification, those goods are considered to be identical: See *Gérard Meric v OHIM,* Case T-133/05 at [29].

19. Further, in *Kurt Hesse v OHIM*,[5] 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*,[6] the General Court ("GC") stated that "complementary" means:

> "82. …there is 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."

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

> "12. […] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]- [49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

21. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*:[7]

> "The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the

[5] Case C-50/15 P
[6] Case T-325/06
[7] BL O/399/10

extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

22. The competing goods are as follows:

Opponent's goods	Applicant's goods
"First Earlier Mark"	
	Class 18: Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Clothing for pets; Collars for animals; Hiking sticks; Leather leashes; Muzzles; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.
	Class 20: Bedding, except linen; Beds; Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dog kennels; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Beds for household pets;

	Camping mattresses; Kennels for household pets; Nesting boxes for household pets; Pet cushions; Sleeping pads; Wardrobes; Washstands [furniture].
Class 21: Combs for the hair (Large-toothed-); Electric hair combs; Electric rotary hair brush for styling a user's hair; Hair brushes; brushes for use in detangling hair; Hair combs; Hair for brushes; Hairbrushes; Brush holders; Brushes; Brushes for cleaning; Brushes (Electric-), except parts of machines; Brushes for pets; Brushes for personal hygiene, Brushes for grooming pet animals; Brushes for grooming horses; Mane brushes [horse combs]; Horse brushes of wire; Horse brushes; parts, fittings and accessories all for the aforesaid goods.	**Class 21:** Dustbins; Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chamber pots; Chopsticks; Coffeepots, non-electric; Earthenware; Grill supports; Litter boxes for pets; Towel rails and rings; Cages for household pets; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils; Pet feeding bowls; Pet feeding bowls, automatic.
“Second Earlier Mark”	
	Class 18: Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Clothing for pets; Collars for animals; Hiking

	sticks; Leather leashes; Muzzles; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.
	Class 20: Bedding, except linen; Beds; Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dog kennels; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Beds for household pets; Camping mattresses; Kennels for household pets; Nesting boxes for household pets; Pet cushions; Sleeping pads; Wardrobes; Washstands [furniture].
Class 21: Hair Brushes, Hair Combs, Hair for Brushes, Household Utensils, Horse Brushes, Brushes for Grooming Pet Animals, Brushes for household use, Brushes for personal hygiene, Brushes for	**Class 21:** Dustbins; Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chamber pots; Chopsticks; Coffeepots, non-electric; Earthenware; Grill

the hair, Brushes, electric [except parts of machines].	supports; Litter boxes for pets; Towel rails and rings; Cages for household pets; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils; Pet feeding bowls; Pet feeding bowls, automatic.

23. The Applicant submits in its counterstatement:[8]

> "The Applicant's trade mark application covers a broad and diverse range of goods, particularly in Class 18, 20 and 21 […]
>
> These goods clearly reflect a dedicated focus on the pet care industry, catering to the lifestyle, grooming, and wellbeing of household pets.
>
> In contrast, the Opponent's goods are extremely narrow in scope, centering exclusively on hairbrushes and related brush products in Class 21. […]. Furthermore: Class 18/20 and Class 21 are entirely unrelated to hairbrushes or personal grooming.
>
> These classes are associated with pet textiles, travel accessories, and soft goods, representing a distinct market segment with different manufacturing, distribution, and retails structures; […]"

Class 18

24. In relation to the Applicant's goods in class 18, the Opponent submits the following:[9]

[8] TM8 and counterstatement, pages 7 – 8.
[9] Amended TM7 and statement of grounds, paragraph 10.

> "The Applicant's goods in Class 18 include: *Clothing for pets; Collars for animals; Leather leashes; Muzzles* which, while not literally overlapping with the Opponent's Class 21 goods, are still complementary in function and target the same market (pet owners). Consumers encountering grooming brushes (Opponent) and pet apparel or collars (Applicant) are likely to believe the goods originate from the same or related commercial sources."

Clothing for pets; Collars for animals; Leather leashes; Muzzles.

25. In considering the above goods, I note that the Opponent's earlier marks include goods relating to pets/animals in class 18. For example, the specification for the First Earlier Mark includes "*Brushes for pets*", "*Brushes for grooming pet animals*" and a range of brushes for horses, and the specification of the Second Earlier Mark includes "*Horse Brushes*" and "*Brushes for Grooming Pet Animals*". Whilst these goods differ in nature, method of use and purpose to the Applicant's goods, I am of the view that there still exists a degree of similarity between them. I am inclined to agree with the Opponent that the goods are likely to overlap in trade channels and users. From my understanding, producers of clothing for pets, collars for animals, muzzles and leashes are also likely to produce and sell animal grooming products. Furthermore, in retail environments such as supermarkets, such goods are likely to be found in the same aisles. The goods will clearly be purchased by the same users (pet and animal owners). I do not find the goods to be complementary or competitive. Taking all the above factors into account, I find that these goods are similar to a low degree.

Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Hiking sticks; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.

26. Whilst the Opponent has submitted that the respective goods are similar[10], absent of any evidence, I am inclined to disagree, as I see no obvious similarity between the Applicant's above goods and the Opponent's wide selection of brushes. The goods clearly differ in nature, method of use and purpose. I do not consider there would be any overlap in trade channels, aside from on a superficial level such as in departmental stores, and the respective goods are neither in competition nor complimentary. While there may be a general overlap in users, in as much as both sets of goods may be purchased by members of the general public, this overlap is not sufficient on its own to establish similarity. Accordingly, I find the Applicant's above goods in class 18 to be dissimilar to each of the Opponent's goods as relied upon in class 21.

Class 20

27. In relation to the Applicant's goods in class 20, the Opponent submits the following:[11]

> "In Class 20, the Applicant covers *Beds for pets*; *Kennels for household pets*; *Pet cushions*; *Sleeping pads* which are all goods for pet comfort and housing. These are not identical but serve the same market as "Brushes for pets" or "Brushes for grooming pet animals". Again, the functional connection and shared distribution channels point to a normal degree of similarity."

Dog kennels; Beds for household pets; Kennels for household pets; Nesting boxes for household pets; Pet cushions.

28. I compare the Applicant's above goods to the Opponent's selection of brushes for pets and animals in its earlier marks. For the reasons provided in paragraph [25], I find the above goods to be similar to a low degree.

[10] TM7 and statement of Grounds, paragraph 13.
[11] TM7 and statement of grounds, paragraph 11.

Bedding, except linen; Beds; Sleeping Pads.

29. I note the Opponent's submissions in paragraph [27], that the Applicant's '*Sleeping pads*' are similar to the Opponent's range of brushes for pets and animals in its earlier marks. The term '*Sleeping pads'* is not limited to pets and may include pads intended for use by humans, for example when camping. As such, the broad term may include sleeping pads for animals and humans. I consider this to also be the case for the Applicant's '*Bedding, except linen'* and '*Beds*'. However, I am mindful not to take the principle too far and not to apply too liberal an interpretation to the natural meaning of the goods at issue.[12] Whilst goods for use on animals are usually qualified as such, this does not necessarily extend to similar goods intended for use by humans. To the extent that the respective goods may share the same users and trade channels, as they may be purchased by pet owners and sold through pet retail stores, goods intended for use by humans would be found in different aisles to those intended for use by pets. However, the goods differ in nature, purpose and method of use. They are neither complementary nor competitive. I do not consider that the average consumer would expect the goods at issue to be provided by the same or economically-linked undertakings. Accordingly, I find the Applicant's above goods in class 20 to be dissimilar to each of the Opponent's goods as relied upon in class 21.

Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Camping mattresses; Wardrobes; Washstands [furniture].

30. In the absence of any evidence, I see no obvious similarity between the Applicant's above household goods and the Opponent's wide selection of brushes. The goods clearly differ in nature, purpose and method of use. The goods are neither in competition nor complimentary. While there may be a general overlap in channels of trade and in users, in as much as both sets of goods may be purchased by members of the general public from general retailers, taking a 'common sense'

[12] YouView

approach,[13] this overlap is not sufficient on its own to establish similarity. Accordingly, I find the Applicant's above goods in class 20 to be dissimilar to each of the Opponent's goods as relied upon in class 21.

Class 21

31. In relation to the Applicant's goods in class 21, the Opponent submits the following:[14]

> "The Applicant's specification in Class 21 includes: *Pet feeding bowls, automatic; Pet feeding bowls; Kitchen utensils; Containers for household or kitchen use; Cages for household pets; Towel rails and rings; Litter boxes for pets; Grill supports; Earthenware; Coffee services [tableware]; Coffee pots, non-electric; Chamber pots; Ceramics for household purposes; Bottles; Soap holders; Oven mitts; Jugs; Insulating flasks; Dustbins; Grills [cooking utensils]* and others. The Opponent's goods include: *Brushes for pets; Brushes for grooming pet animals; Brushes for grooming horses; Hairbrushes; Electric rotary hair brushes; Combs; Household utensils; Brushes for household use; Brushes for personal hygiene* and related accessories."
>
> The goods such as "Brushes for household use" and "Brushes for cleaning" are overlapping with "Kitchen utensils" in the Applicant's list, as they serve similar functions and are sold through the same retail channels, often in overlapping sections of stores.
>
> Furthermore, "Brushes for grooming pet animals", "Litter boxes for pets" and "Pet feeding bowls" all fall within the category of pet care articles and are likely to be marketed together. These are complementary goods, often used by the same end user (pet owners) and found in the same

[13] *Unicorn Studio Inc v Veronese* Case CH-2023-000214, at [24].
[14] TM7 and statement of grounds, paragraphs 7-9.

commercial contexts. Hence, they are at least similar to a normal degree."

Litter boxes for pets; Cages for household pets; Pet feeding bowls; Pet feeding bowls, automatic.

32. I compare the Applicant's above goods to the Opponent's selection of brushes for pets and animals in its earlier marks. For the reasons provided in paragraph [25], I find that the above goods are similar to a low degree.

Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chopsticks; Coffeepots, non-electric; Earthenware; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils.

33. I compare the Applicant's above goods with the Opponent's '*Household Utensils*' in its "second earlier mark". I understand household utensils to be small, hand-operated domestic articles used in the home for preparing, serving, storing, handling or consuming food and drink, or carrying out routine household tasks. In my view, the broad term '*Household Utensils'* encompasses the Applicant's contested goods and are, therefore, identical as per the *Meric* principle. However, I recognise the breadth of the term '*Household Utensils'*, and in the alternative, should I be wrong in finding the above goods fall within its scope, I find that the respective goods will nevertheless be highly similar. They share the same purpose, users, method of use, trade channels and may also be in competition.

Dustbins.

34. A '*Dustbin*' is a container designed for the collection and storage of waste, whereas the Opponent's '*Household Utensils'* in its second earlier mark, are small, hand-operated domestic items used in the home for carrying out everyday household tasks, including preparing, serving, storing, handling or consuming food and drink. They, therefore, differ in nature, purpose and method of use. However, both are household goods intended for domestic use aimed at the general public

and may be sold through the same trade channels, such as supermarkets, department stores and homeware retailers. The are neither complementary nor in competition. As such, I find the goods to be dissimilar. However, If I am wrong in my assessment, I would find the goods similar to a low degree.

Towel rails and rings.

35. The Applicant's above goods are household fittings or accessories designed to hold or dry towels in a bathroom, kitchen or similar environment, whereas the Opponent's '*Household Utensils'* in its second earlier mark, are small, hand-operated domestic items used in the home for carrying out everyday household tasks. For the reasons provided in paragraph [34], I find the goods to be dissimilar. However, If I am wrong in my assessment, I would find the goods to be similar to a low degree.

Grill supports.

36. A 'Grill support' is a household fitting or accessory designed to be used in conjunction with cooking equipment, as a stand, frame or bracket that supports a grill, grate or tray during cooking, whereas the Opponent's '*Household Utensils'* in its second earlier mark, are small, hand-operated domestic items used in the home for carrying out everyday household tasks. They, therefore, differ in nature, purpose and method of use. However, both goods are household goods, intended for domestic use, aimed at the general public, and may reach the market through the same general homeware retail channels. The are neither complementary nor in competition. As such, I find the goods to be similar to a low degree.

Chamber pots.

37. A '*Chamber pot*' is a sanitary receptacle for the collection of human waste, whereas the Opponent's '*Household Utensils'* in its second earlier mark, are small, hand-operated domestic items used in the home for carrying out everyday household tasks. They, therefore, differ in nature, purpose and method of use. However, both goods are household goods, intended for domestic use, aimed at the general

public, and may reach the market through the same general homeware retail channels. The are neither complementary nor in competition. As such, I find the goods to be dissimilar. However, If I am wrong in my assessment, I would find the goods to be similar to a low degree.

38. As some degree of similarity between the goods is essential to a finding of confusion: *eSure Insurance v Direct Line Insurance, [2008] ETMR 77 CA,* the opposition fails at this point in relation to all the goods where I have failed to establish any similarity. For ease of reference, the opposition fails against the following goods in classes 18, 20 and 21 in the Applicant's specification:

Class 18: Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Hiking sticks; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.

Class 20: Bedding, except linen; Beds; Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Camping mattresses; Sleeping Pads; Wardrobes; Washstands [furniture].

Class 21: Dustbins; Chamber pots; Towel rails and rings.

39. For the remaining goods where I have found similarity, I will continue in my assessment under section 5(2)(b). These are as follows:

Class 18: Clothing for pets; Collars for animals; Leather leashes; Muzzles.

Class 20: Dog kennels; Beds for household pets; Kennels for household pets; Nesting boxes for household pets; Pet cushions.

Class 21: Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chopsticks; Coffeepots, non-electric; Earthenware; Grill supports; Litter boxes for pets; Cages for household pets; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils; Pet feeding bowls; Pet feeding bowls, automatic.

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The average consumer and the nature of the purchasing act

40. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods 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. 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 word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

41. The average consumer for the goods at issue is a member of the general public, including those who own pets and horses. However, I recognise that some of those pet and horse related goods may also be purchased by professional animal groomers and businesses. The cost of the goods may vary, but, overall, they are relatively inexpensive and are likely to be purchased relatively frequently. When purchasing the goods, the average consumer will consider factors such as quality, design, cost and compatibility. The goods will be available to purchase from a variety of retail outlets and stores or their online or catalogue equivalents, including pet and equestrian retailers for pet and horse related goods. Visual considerations are, therefore, likely to dominate the selection process. Nevertheless, I do not

discount aural considerations, as it is possible that the average consumer will receive word-of-mouth recommendations or discuss the goods with a sales assistant before making a purchase. Consequently, taking all these factors into account, I find that where the average consumer is the general public, they will pay a medium degree of attention during the purchasing process, which may be slightly higher than medium when purchased by a professional/business user, such as a professional groomer.

Comparison of marks

42. It is clear form *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, 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 relevant 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."

43. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade 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.

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

Opponent's marks	Applicant's mark

Love your Pet - Love your Planet ("First Earlier Mark")	**Love Your Pet, Love Your Planet**
Love your Hair - Love your Planet ("Second Earlier Mark")	

Overall impression

45. The First Earlier Mark is comprised of the word combination 'Love your Pet – Love your Planet', presented in black and bold upper and lower case letters, without any stylisation. Despite the presence of the hyphen between the words 'Pet' and 'Love' which plays a negligible role, serving only to create a space/pause between the words, the overall impression will be dominated by the combination of words, which I find will be perceived as a unitary expression or phrase. As there are no other elements to contribute to the overall impression, it lies equally in the combination as a whole.

46. The Second Earlier Mark is comprised of the word combination 'Love your Hair - Love your Planet', presented in black and bold upper and lower case letters, without any stylisation. As noted in paragraph [45], I consider that the hyphen between 'Hair' and 'Love' will play a negligible role and that the overall impression will be dominated by the combination of words, which will be perceived as a unitary expression or phrase. As there are no other elements to contribute to the overall impression, it lies equally in the combination as a whole.

47. The Applicant's mark consists of the word combination 'Love Your Pet, Love Your Planet' presented in black and bold, upper and lower case letters, without any stylisation. I consider that the comma between 'Pet' and 'Love' will be overlooked, as it serves only to create a pause between the words, and as such, will play no

significant role in the overall impression of the mark. The combination of words will be perceived as a unitary expression or phrase and, as there are no other elements to contribute to the overall impression, it lies equally in the combination as a whole.

Visual Comparison

First Earlier Mark

48. In making my visual comparison of the marks, I bear in mind that both marks coincide insofar as they share the identical words, 'Love your Pet – Love your Planet'/'Love Your Pet, Love Your Planet'. They differ in that the earlier mark contains a hyphen after the word 'Pet' and the contested mark contains a comma. Additionally, the word 'Your' in the Applicant's mark starts with a capital letter, whereas in the earlier mark, this is in lower case. However, I bear in mind that those differences in capitalisation are not significant since notional and fair use of word marks allows its use in either upper or lower case. Accordingly, weighing up the similarities with the differences, I find the respective marks to be visually similar to a very high degree.

Second Earlier Mark

49. Visually, the marks coincide insofar as they share the five identical words, 'Love your […] Love your Planet', positioned identically within both marks. The marks differ in their third word, namely 'Hair' in the earlier mark and 'Pet' in the contested mark. Further differences arise from the hyphen after the word 'Hair' in the earlier mark, the comma after the word 'Pet' in the contested mark, and variations in capitalisation in the word 'Your/your', although I consider it likely that these slight variations will go unnoticed by a significant proportion of the average consumer. Accordingly, weighing up the similarities with the differences and bearing in mind that the beginning of marks tend to have more impact, I find the respective marks to be visually similar to between a medium to high degree.

Aural Comparison

First Earlier Mark

50. Neither the hyphen in the earlier mark nor the comma in the contested mark will be articulated, although each may introduce a short pause after the word ‘Pet’. As such, the punctuation in both marks will not create any material aural difference between the marks. Consequently, both marks consist of 7 syllables and share the same combination of words, ‘Love your Pet’ and ‘Love your Planet’. All the words present in both marks are ordinary English dictionary words and will be pronounced identically. Therefore, I find that the competing marks are aurally identical.

Second Earlier Mark

51. Both marks consist of 7 syllables, namely, ‘Love your Hair – Love your Planet’ in the earlier mark and ‘Love Your Pet, Love Your Planet’ in the Applicant’s mark. The respective marks overlap in the shared words, ‘Love your […] Love your Planet’. All words in both marks are ordinary English dictionary words and the relevant consumer will articulate them accordingly. Neither the hyphen in the earlier mark nor the comma in the contested mark, will be articulated, although each may introduce a short pause after the words ‘Hair’ and ‘Pet’. As such, the punctuation in both marks will not create any material aural difference between the marks. Accordingly, I find the competing marks to be aurally similar to between a medium to high degree.

Conceptual Comparison

52. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

First Earlier Mark

53. The Opponent submitted[15] that the first earlier mark and the contested mark convey the same idea, namely a message connecting care for a pet with care for the environment. The Applicant submitted[16] that the words 'Love Your Pet' invoke strong emotional and functional associations with pet ownership, community and lifestyle. The Applicant further submitted that the visual and linguistic flow of the contested mark, including the comma and word rhythm, differentiates it from the Opponent's slogan-like expression. However, both marks contain the identical words 'Love your Pet' and 'Love your Planet'. Viewed as a whole, I find that both marks will be understood as conveying the same promotional message, that is, that the goods are eco-friendly (i.e. love your planet) and that buying this brand shows you care about the planet as well as your pet. As such, I find that 'Love your Pet/Love Your Pet' is highly allusive of eco-friendly goods intended for pets, and that the message is identical in both marks. I do not consider that the differences in punctuation and capitalisation have any impact on that meaning. Accordingly, I find the marks to be conceptually identical.

Second Earlier Mark

54. The Opponent submitted[17] that the second earlier mark, 'Love your Hair – Love your Planet' and the contested mark, 'Love Your Pet, Love Your Planet' convey the same dual-message concept. The Applicant submitted that 'Love Your Hair' suggests self-care, beauty and cosmetic maintenance and that the consumer would naturally and instinctively categorize these marks into different mental boxes. Viewed as a whole, I find that the Applicant's mark will convey the same message as noted above in paragraph [53], namely that the goods are eco-friendly and buying this brand shows you care about the planet as well as your pet. The second earlier mark will convey a corresponding promotional message in relation to caring for and maintaining one's hair. As noted above, I do not consider that the differences in punctuation and capitalisation will alter those meanings. Although both marks contain points of conceptual difference through their distinct references to a 'Pet' and 'Hair', they both evoke the same promotional message towards those

[15] Amended TM7 and statement of grounds, paragraph 18.
[16] TM8 and counterstatement, page 10
[17] Amended TM7 and SOG, para 18.

areas and the planet. Accordingly, I find the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

55. In *Lloyd Schuhfabrik Meyer*, 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 Alternberger* [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)."

56. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

57. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the Opponent has not filed any evidence to show that the distinctiveness of its marks has been enhanced through use. Consequently, I have only the inherent position to consider.

58. The earlier marks comprise the word combinations, 'Love your Pet – Love your Planet' and 'Love your Hair – Love your Planet'. As mentioned previously, the combination of these words is likely to be understood by a significant proportion of consumers as a unitary expression conveying the promotional message, that a person's care or affection for their pet or for their hair, is connected with, or should extend to, care for the planet. Insofar as the first earlier mark is registered for goods intended for pets and horses, the words 'Love your Pet' is allusive of its intended purpose or users. Similarly, 'Love your Hair' is allusive of the intended purpose or users of hair brushes and other hair care goods for humans, and albeit less so, in relation to brushes for grooming the coats or mains of pets and horses. The words 'Love your Planet' in both earlier marks conveys a promotional message that the goods are environmentally friendly or environmentally conscious. The distinctive character of each mark therefore lies in the combination of its words and the resulting overall message, Overall, I find that each earlier mark possesses a low level of inherent distinctive character.

Likelihood of confusion

59. In determining whether there is likelihood of confusion, I must take all of the above factors into account and consider if there is a likelihood of confusion for the average consumer.

60. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. While indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where

a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective goods and services may be offset by a greater degree of similarity between the marks and vice versa. I must bear in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing act. To do so, I must recognise that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

61. Earlier in this decision, I have found:

- that the goods range from a low degree of similarity to Meric identity.

- the average consumer will be the general public, as well as professional and business users for the pet and horse related goods, who will select the goods predominantly by visual means, although aural considerations cannot be discounted.

- The average consumer will pay a medium degree of attention during the purchasing process, which may be slightly higher than medium where the purchaser is a professional or business user.

- The Opponent's 'first earlier mark' is visually similar to a very high degree and aurally and conceptually identical.

- The Opponent's 'second earlier mark' is visually and aurally similar to between a medium and high degree and conceptually similar to a medium degree.

- The Opponent's earlier marks are inherently distinctive to a low degree.

First Earlier Mark

62. I bear in mind that the Opponent's 'first earlier mark' and the contested mark share the identical phrase, 'Love your Pet – Love your Planet'/'Love Your Pet, Love Your Planet' and have found that the overall impression lies across the marks has a whole. Even bearing in mind that I have found the earlier mark to be inherently distinctive to a low degree, I am mindful of the decision in *L'Oréal SA v OHIM*, Case C-235/05 P, in which the CJEU confirmed that weak distinctive character of the earlier trade mark does not preclude a likelihood of confusion.[18] It is settled case-law that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. With regards to the differences in punctuation and capitalisation between the marks, they will have no impact on the meaning attributed to the marks and are therefore likely to be overlooked or be forgotten. Therefore, it is highly likely that the average consumer will misremember the marks for one another. Given that the marks both contain the same identical expression or phrase, which dominates the overall impression of the marks, I find that the average consumer, paying between a medium and slightly higher than medium degree of attention is unlikely to recall the differences between the marks, resulting in the consumer confusing the marks for one another. I find this to be the case even where the goods are similar to a low degree. Consequently, I find that there is a likelihood of direct confusion for the goods relied upon under the first earlier mark and the contested mark.

Second Earlier Mark

63. Considering the factors in paragraph [61], even bearing in mind the principle of imperfect recollection, I am satisfied that the parties' marks are unlikely to be mistakenly recalled for one another. I do not consider that a consumer paying a medium or slightly higher than medium degree of attention during the purchasing process will overlook the word 'Hair', which acts as a visual, aural and conceptual point of difference between the marks. I therefore do not consider there to be a likelihood of direct confusion between the Opponent's second earlier mark and the contested mark.

[18] At [45].

64. I will now go on to consider indirect confusion in relation to the second earlier mark. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element. It is not sufficient that a mark merely calls to mind another mark:[19] this is mere association not indirect confusion.

65. In *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, by 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).

[19] *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17

(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 subbrand 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)".

66. Further, in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

Second Earlier Mark

67. In order to find indirect confusion in this case, it would be necessary to conclude that the average consumer will notice the common elements 'Love your [….] Love your Planet' present in the respective marks, whilst also recalling the differences. The main difference is between the third word in both marks, namely 'Hair' in the Opponent's mark and 'Pet' in the contested mark, together with the aforementioned differences in punctuation. The average consumer would then have to assume, notwithstanding those differences, that the marks originate from the same or related undertakings. Although both marks contain points of conceptual difference through their distinct references to a 'Pet' and 'Hair', they convey a corresponding and identically structured message, that the goods are eco-friendly and buying this brand shows you care about the planet as well as your pet and hair. I find that the average consumer is likely to perceive the Applicant's mark, 'Love Your Pet, Love Your Planet as a brand variant of the earlier mark, 'Love your Hair - Love your Planet' indicating a different range of goods under the same brand, and therefore functioning as a brand of origin. Given the identity and similarity of the goods, the

medium to high degree of visual and aural similarity and the medium degree of conceptual similarity between the marks and also bearing in mind that it is not uncommon for a brand to introduce brand variants, I consider that the average consumer would assume that the marks originate from the same, or economically linked, undertakings. Accordingly, I consider there to be a likelihood of indirect confusion for all goods for which I found at least a medium degree of similarity or above. For the avoidance of doubt, I do not consider this likelihood of indirect confusion extends to those goods for which only a low degree of similarity, at best,[20] was found.

Conclusion

68. The opposition under Section 5(2)(b) of the Act has been partially successful. As such, subject to any successful appeal, the following goods will not proceed to registration:

Class 18: Clothing for pets; Collars for animals; Leather leashes; Muzzles.

Class 20: Dog kennels; Beds for household pets; Kennels for household pets; Nesting boxes for household pets; Pet cushions.

Class 21: Grills [cooking utensils]; Insulating flasks; Jugs; Oven mitts; Soap holders; Beer mugs; Bottles; Ceramics for household purposes; Chopsticks; Coffeepots, non-electric; Earthenware; Litter boxes for pets; Cages for household pets; Coffee services [tableware]; Containers for household or kitchen use; Kitchen utensils; Pet feeding bowls; Pet feeding bowls, automatic.

69. However, the opposition fails in respect of the following goods, which subject to any successful appeal, may proceed to registration:

[20] Including those goods compared under paragraphs 34, 35 and 37 of this decision.

Class 18: Bags for campers; Bags for climbers; Bags; Leather or leather-board boxes; Hiking sticks; Attaché cases; Bags for sports; Business card cases; Compression cubes adapted for luggage; Garment bags for travel; Handbags; Net bags for shopping; Parasols; Suitcases.

Class 20: Bedding, except linen; Beds; Bedsteads of wood; Bookcases; Bottle racks; Chaise longues; Coat hangers; Cots for babies; Cupboards; Curtain hooks; Curtain rings; Curtain tie-backs; Cushions; Dressing tables; Flower-stands [furniture]; Furniture; Furniture of metal; Bamboo curtains; Bed bases; Camping mattresses; Sleeping Pads; Wardrobes; Washstands [furniture].

Class 21: Dustbins; Chamber pots; Grill supports; Towel rails and rings.

Costs

70. On balance, I consider that both parties have achieved a relatively equal level of success in these proceedings. In the circumstances, I do not consider it appropriate to make a costs award in favour of either party. Therefore, I order both parties to bear their own costs in these proceedings.

Dated this 28th day of October 2026

Mrs Joanne Roberts
For the Registrar