

O/1064/25

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

**IN THE MATTER OF INTERNATIONAL REGISTRATION NUMBER
WO0000001766745**

BY MONSIEUR LEGHBALI KYRIAN

TO REGISTER THE FOLLOWING TRADE MARK:



ROSEGOLD

IN CLASSES 3, 5 AND 35

AND

AN OPPOSITION THERETO UNDER NUMBER OP000448267

BY ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI

BACKGROUND

1. On 30 October 2025, a decision in the above opposition proceedings was published under reference number BL O/1015/25 (“*my decision*”).
2. On 15 September 2025, the Office informed the Holder that its specification had been amended following a limitation it filed before WIPO. The Office’s official letter stated the following:

“Dear Recipient,

Following the notification from WIPO the specifications in the following Classes have been amended to read as follows:

Class 5

Dermatological preparations; gels, creams and solutions for dermatological use; antibacterial gels.

Class 35

Retail sale service for cosmetics and cosmetic preparations for the face and body, dermo-cosmetic products, cosmetic creams, cosmetic oils, cosmetic masks, cosmetic soaps, skin care preparations, namely, creams, milks, serums, lotions, gels and powders for the face and body, serum for hair care, make-up products, make-up removing milk, gel and oil, dermatological preparations, gels, creams and solutions for dermatological use, antibacterial gels.

The opponent has been requested to confirm in writing whether this amendment will allow the opposition to be withdrawn. Any response must be filed on, or before, **29 September 2025.**”

3. I misinterpreted the letter as featuring the Holder’s new specification. This led me to believe that the Holder’s original class 3 had been removed from the specification as explained at footnote 2 of paragraph [2] and paragraph [50] of my decision. I then went on with my assessment of the marks’ similarity and likelihood

of confusion (or lack thereof) exclusively with regard to the Holder's classes 5 and 35 and reached the conclusion to dismiss in its totality the opposition filed by ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI ("**the Opponent**"). As a result, subject to any successful appeal, I determined that the International Registration ("**the IR**") shown on the cover page of this decision may proceed to registration for classes 5 and 35.

4. Following the issuance of my decision, it has been brought to my attention that class 3 is, in fact, part of the Holder's specification.¹ The Opponent has therefore requested that my decision be reconsidered including class 3 in the revised decision. I agree that it is reasonable and proper in the circumstances to review my decision, having regard to the Opponent's full specification. Whilst I do not consider it appropriate to set aside my decision in its entirety, I issue this supplementary decision in accordance with Rule 74 of the Trade Mark Rules 2008 in order to rectify the procedural irregularity that has occurred. The findings in my original decision still stand and this supplementary decision addresses the findings in relation to class 3.
5. For ease of reference, unless indicated otherwise, I will adopt the same defined terms specified in my decision in this supplementary decision.

SUPPLEMENTARY DECISION

Comparison of goods and services

6. The General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

"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

¹ Email from the Opponent dated 4 November 2025.

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

7. The goods and services to be compared are shown in the table below:

The Opponent's goods/services	The Holder's goods
<p data-bbox="252 488 584 524">(<i>“the first earlier mark”</i>)</p> <p data-bbox="252 577 392 613"><u>Class 35:</u></p> <p data-bbox="252 672 810 1644">Provision of an online marketplace for buyers and sellers of goods and services; the bringing together, for the benefit of others, of a variety of goods, namely, [...] perfumery, cosmetics (except medicated cosmetics), fragrances, deodorants for personal use and animals, soaps (except medicated soap), dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes, [...] 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.</p>	<p data-bbox="831 577 946 613"><u>Class 3</u></p> <p data-bbox="831 672 1393 1146">Cosmetics and cosmetic preparations for the face and body; dermocosmetic products; cosmetic creams; cosmetic oils; cosmetic masks; cosmetic soaps; preparations for skin care, namely creams, milks, serums, lotions, gels and powders for the face and body; serum for hair care; make-up products; make-up removing gel, oil and milk.</p>

<p>(“<i>the fourth earlier mark</i>”)</p> <p><u>Class 3:</u></p> <p>Perfumery; fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; cosmetics and cosmetic preparations, make-up preparations; cosmetics and cosmetic preparations; rose oil for cosmetic purposes; nail varnish for cosmetic purposes; nail polish remover; lipsticks; eyeliner pencils; mascaras.</p>	
<p>(“<i>the fifth earlier mark</i>”)</p> <p><u>Class 3:</u></p> <p>Perfumery; cosmetics (except medicated cosmetics); fragrances; deodorants for personal use and animals; soaps (except medicated soap); dental care preparations, dentifrices [...]; [...] hair colorants, hair coloring preparations, coloring preparations for cosmetic purposes.</p>	

8. The Opponent contends that “*the goods of all marks are mainly cosmetics in class 03 [...]*”.² The Holder concedes that “*the selected goods listed by the Opponent in Class 3 are, with the exception of deodorants for animals, similar to the Applicant*

² Opponent’s statement of grounds dated 24 June 2024 at [7].

goods in Class 3” and that “the Opponents retail services are similar to the Applicants retail services for the Class 3 goods”.³ Therefore, regarding the Opponent’s services in class 35 (in the first earlier mark) and the class 3 goods (in the fourth and fifth earlier marks), for the respective goods and services at least a minimum degree of similarity must be found.

“The first earlier mark”

9. The Holder’s goods in class 3 essentially all consist of cosmetics and cosmetic preparations for the face and body. The Opponent’s class 35 features the term “*the bringing together, for the benefit of others, of a variety of goods, namely, [...] cosmetics (except medicated cosmetics) [...] 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*”.
10. As outlined in my decision at paragraph [58], for the purposes of these proceedings, I will consider the Opponent’s offer for sale services provided by retail stores directly to end consumers, i.e., “*the bringing together, for the benefit of others, of a variety of goods, namely, [...] cosmetics (except medicated cosmetics) [...] enabling customers to conveniently view and purchase those goods, such services may be provided by retail stores [...] by means of electronic media or through mail order catalogues*”. As this assessment pertains to a comparison of retail services and goods, I remind myself of the case of *Oakley, Inc v OHIM*, Case T-116/06 wherein the GC, at paragraphs [46] – [57], 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.
11. Additionally, in *El Corte Inglés, SA, v (EUIPO)*, Case T-729/18, the GC stated that:

“[...] it must be borne in mind that goods and services can be considered to be complementary where there is a close connection between them, in the sense that one is indispensable or important for the use of the other, with the result that consumers may think that the same undertaking is responsible for

³ Holder’s counterstatement dated 25 September 2024 at [2] an [4].

manufacturing those goods and for providing those services (see, to that effect, judgment of 16 October 2013, *El Corte Inglés v OHIM — Sohawon* (fRee YOUR STYLE.), T-282/12”.

12. Cosmetics are not particularly expensive products made for everyday use that are sold by a wide variety of bricks-and-mortar and internet retailers, department stores and supermarkets. The Opponent’s services would involve selecting and bringing cosmetics goods together and services aimed at encouraging the consumer to buy the goods there, rather than from another retailer.
13. There is no similarity of nature or purpose between the respective goods and services. However, the users of the retail services will be the same as the users of the goods, and trade channels will be the same. There is no competition but there is, to my mind, a degree of complementarity as cosmetics are indispensable to the service of retailing of cosmetics and the consumer may believe that the retail services and the goods are the responsibility of the same undertaking.
14. I find there to be a medium degree of similarity between the Opponent’s services and the Holder’s cosmetics and cosmetic preparations.

“The fourth earlier mark”

15. The Holder’s contested goods in class 3 are products intended for cleansing, beautifying, promoting attractiveness, or altering appearance. Therefore, by definition, they all fall under the wider definition of cosmetic preparations. The Opponent’s fourth earlier mark’s specification features the term “*cosmetics and cosmetic preparations, make-up preparations*” in class 3. Therefore, the goods are identical in line with the principle outlined in *Meric*.

“The fifth earlier mark”

16. The Holder’s goods in class 3 are cosmetics (i.e., “*dermocosmetic products; cosmetic creams; cosmetic oils; cosmetic masks; cosmetic soaps serum for hair care; make-up products; make-up removing gel, oil and milk*”) and cosmetic preparations (i.e., “*preparations for skin care, namely creams, milks, serums, lotions, gels and powders for the face and body*”). Regarding the Holder’s

cosmetics listed above, these are self-evidently identical to the Opponent's "*cosmetics (except medicated cosmetics)*" in class 3.

17. Turning to the Holder's cosmetic preparations listed above, in comparison to the Opponent's "*cosmetics (except medicated cosmetics)*", the respective goods have the same nature (substances or mixtures formulated for external application to the body), intended purposes (non-therapeutic products intended for aesthetic functions such as cleaning, perfuming, beautifying, or protecting) and method of use (external application on the skin or hair). The respective goods are all intended for everyday consumer use and target the same users (the general public seeking products for personal care, hygiene, beautification, and aesthetic enhancement) along with being sold in the same venues such as, for example, supermarket, online stores or more specialised stores (e.g., Boots). It follows that the respective goods also share the same trade channels and are in competition with each other. Overall, I find the respective goods to be highly similar.

18. I appreciate the Holder's submission for which the Opponent's "*deodorants for [...] animals*" are different from the contested goods. However, as I found above that all the Holder's goods are either identical or highly similar to the Opponent's "*cosmetics (except medicated cosmetics)*", this is enough for me to find identity/similarity between the respective goods notwithstanding the fact that the Opponent's specification also features "*deodorants for [...] animals*".

The average consumer and the nature of the purchasing act

19. It is necessary to determine who the average consumer is for the respective parties' goods and services. I must then decide the manner in which these goods and services are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. 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”.

20. As a preliminary point, in line with what was stated at paragraph [10] in this decision, I find that both the retail of cosmetics/cosmetic preparations (class 35) and the cosmetics/cosmetic preparations goods (class 3) are aimed at the general public seeking to purchase such products. Therefore, the same considerations regarding the purchasing act, can be carried out for both the goods and services at hand. The average consumer of the category of products/services concerned is deemed to be reasonably well-informed and reasonably observant and circumspect (see, to that effect, Case C-210/96, *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 31).
21. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods (and goods being retailed) in question.⁴
22. The Opponent contends that “*the average consumer is the general public and will have a relatively low degree of attention when purchasing these types of goods and services*”.⁵ the Holder argues that “[...] *the average consumer for the purchase and retail of cosmetics, toiletries are likely to be the same, though it is denied that these consumers have a relatively low degree of attention as a) cosmetics and perfumes can be extremely expensive and b) there is a very high awareness of brand identity and loyalty in this sector*”.⁶
23. I acknowledge the parties’ submissions. The contested goods (and related retail services) will be purchased by the general public as well as those working professionally, such as hairdressers or beauticians. Both the general public and the professionals will take various factors into consideration such as quality, ingredients, fragrance, price, and suitability for the user’s needs (for example, in accordance with the purchaser’s type of hair or skin). The cost of the purchase is likely to vary, although it is unlikely to be particularly high. The frequency of the purchase is also likely to vary, but they are likely to be bought fairly frequently.

⁴ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel BV*, (Case C-342/97, para 26).

⁵ Opponent’s statement of grounds dated 24 June 2024 at [10].

⁶ Counterstatement dated 25 September 2024 at [6].

Accordingly, the level of attention paid will be average (medium) for everyday goods bought by members of the general public and above average (above medium) for professional purchasers.⁷ However, the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.⁸

24. The goods/services are likely to be obtained directly from the provider via websites, specialised retail outlets (e.g., chemists or hairdressers), or by self-selection from the shelves in supermarkets. As such, it is my view that the purchasing process will be predominantly visual in nature. However, aural considerations in the form of word-of-mouth recommendations or verbal discussions with the provider, for instance, cannot be excluded entirely.

Comparison of marks

25. I have already carried out the marks' comparison in my decision at paragraphs [69] – [88]. The same considerations also apply in the circumstance where the competing goods are cosmetics/cometic preparations and/or the retail of such goods. This does not affect my previous findings on the marks' visual, aural and conceptual degree of similarity.

Distinctive character of the earlier marks

26. I refer to my decision at paragraphs [89] – [97]. The same considerations and conclusions apply to this decision.

Likelihood of confusion

27. In my decision I found, regarding the first earlier mark, the parties' services similarity to be medium. In the present supplementary decision, I find the Opponent's services in class 35 and the Holder's goods in class 3 to have the same medium level of similarity. Turning to the fourth and fifth earlier marks, in my decision I found the respective goods and services to have a low level of similarity. In this supplementary decision, I now find the parties' goods and services similarity

⁷ Case T-356/14, [20].

⁸ Idem T -356/14 [25] – [26].

to range from medium to identical. In my decision I assessed the marks' similarity regarding the general public purchasing medicated goods. I will now assess the marks' similarity with regard to the general public for the contested class 3 goods (and the retail thereof). The consumer is likely to pay a medium level of attention in the selection of the goods and/or services at issue. Part of the relevant public for the goods/services at issue could be professionals who would pay an above-medium level of attention, but another part of the relevant public will be members of the general public who will demonstrate a medium degree of attention. I will assess the likelihood of confusion from the perspective of the general public since they are the group who will pay the lower degree of attention. The purchasing process of the contested goods and services is considered to be mainly visual but the potential for aural use also bears some relevance.

28. I will now turn to consider the likelihood of direct confusion (or lack thereof) of the IR in relation to respectively the first, fourth and fifth earlier marks.

29. In my decision I reached the conclusion that, for all three earlier marks, the differences between the respective marks were sufficient to avoid direct confusion. Bearing in mind my findings at paragraphs [101] – [103] of my decision and even taking into consideration the fact that for the goods in class 3 (cosmetics and cosmetic preparations) and services in class 35 (retail of cosmetics) the relevant public is the general consumer (i.e., the general public) who will pay a medium level of attention, and even applying the principles of imperfect recollection and interdependency as well as bearing in mind the high level of similarity (or identity) between the respective goods, I nonetheless maintain the conclusion that the differences between the respective marks are such that no likelihood of direct confusion will occur.

30. Turning to the consideration of whether there subsists a likelihood of indirect confusion, in my decision at paragraphs [106] and [107] I found that the consumers, noticing that the wording and letters in the competing marks had been reversed and partially changed (i.e., "GOLDEN" and "GOLD") to create a different syntactic structure with an almost entirely new meaning (despite a faint reference to 'rose' and 'gold'), alongside the inversion of the letters 'R/G' and changes in stylisation, would not perceive such changes as being intentional steps taken by the same undertaking. Accordingly, I found that the partial overlap in the words and letters

contained in both marks would not form a proper basis for a finding of indirect confusion between the marks. In light of these findings and bearing in mind the respective goods' high level of similarity, I am of the view that the same conclusion is warranted also in relation to the general public for cosmetics/cosmetic preparations (and the retail thereof) even if paying a medium level of attention when purchasing the goods/services at hand. Thus, I do not find that a likelihood of indirect confusion would arise.

Conclusion and costs

31. My conclusion that the Holder's class 3 had been removed when drafting my decision was an irregularity in procedure, albeit one that ultimately made no material impact on the outcome of my decision. The opposition fails under section 5(2)(b) of the Act also for the Holder's contested goods in class 3.
32. In my decision I already found in favour of the Holder and calculated the award of costs accordingly. Therefore, the original sum of £600 is to be paid by ERKUL KOZMETIK SANAYI VE TICARET ANONIM SIRKETI to Monsieur LEGHBALI within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.
33. The appeal period for both this supplementary decision and my original decision, dated 30 October 2025, will begin to run from the date of this supplementary decision.

Dated this 14th day of November 2025

Andrea Rossi

For the Registrar