

O/1151/25

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NUMBER 3701446
IN THE NAME OF INTERCAMP A/S
FOR THE TRADE MARK**



CAMPER

IN CLASS 35

AND

**THE OPPOSITION THERETO UNDER NUMBER 432697
BY CAMPER, S.L.**

Background and pleadings

1. Intercamp A/S (“the applicant”) filed an application for the trade mark shown on the cover page of this decision (number 3701446) on 27 September 2021 for services in class 35. Although the application was filed in the UK on 27 September 2021, it was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union and the EU filing date was 1 December 2020 (“the relevant date”).¹

2. Camper, S.L. (“the opponent”) opposes the application under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following three earlier trade mark registrations for its section 5(2)(b) ground:²

(i) 3238124



Filing date: 19 June 2017; registration date: 8 September 2017
Relying on goods and services in classes 18, 25 and 35.

(ii) 913108352



Colour claimed: Red, white.

Filing date: 23 July 2014; registration date: 15 December 2014.
Relying on goods and services in classes 18, 25 and 35.

(iii) 902662450

CAMPER

¹ The trade mark register also records that the application has a priority date of 1 December 2020 from EUIPO trade mark number 018347582.

² The full list of goods and services for the earlier marks is set out in the annex to this decision.

Filing date: 22 April 2002; registration date 29 July 2003.

Relying on goods and services in classes 18, 25 and 35.

3. Under section 5(2)(b) of the Act, the opponent claims that the parties' goods and services are identical or similar and that the marks are similar, leading to a likelihood of confusion, particularly given the opponent's track record for diversifying their CAMPER brand.

4. Under section 5(3) of the Act, the opponent relies upon the following earlier trade mark registration:

(iv) 909016262

CAMPER

Filing date: 9 April 2010; registration date 16 December 2011.

Class 25: Footwear, clothing, headgear; Diapers (babies' -) of textile; Boot uppers; Heelpieces for footwear; Fittings of metal for footwear; Non-slipping devices for footwear; Welts for footwear; Visors [headwear]; Dress shields; Fittings of metal for footwear; Studs for football boots; Tips for footwear; Footwear uppers; Frames (Hat -) [skeletons]; Frames (Hat -) [skeletons]; Heelpieces for footwear; Heelpieces for stockings; Heels; Insoles; Non-slipping devices for footwear; Pockets for clothing; Linings (Ready-made -) [parts of clothing]; Shirt fronts; Shirt yokes; Footwear soles; Heelpieces for stockings; Studs for football boots [shoes]; Tips for footwear; Footwear uppers; Welts for footwear; Shirt yokes.

5. The opponent claims a reputation in its mark for the goods relied upon, such that the relevant public will believe that the applicant's services come from the opponent or an undertaking economically connected to the opponent. It claims that there will also be unfair advantage because the contested mark will ride on the coat-tails of the opponent's reputation for luxurious, high quality and innovative products. If the applicant's services do not meet the same high standards, this could cause damage to the reputation of the opponent's mark. The third type of damage claimed is that the

use of the applicant's mark would damage the distinctive character of the opponent's mark because the relevant public would mistakenly consider that there is a connection with the opponent's mark.

6. Earlier marks (ii), (iii) and (iv) are subject to the provisions of section 6A of the Act because they had been registered for five years or more at the relevant date. The opponent has made a statement that the earlier marks have been put to genuine use for the goods and services relied upon.

7. Under section 5(4)(a) of the Act, the opponent claims that it has used the sign CAMPER throughout the UK since 1 October 1995 in relation to *Footwear; Clothing; Headgear; Bags; Wallets; Purses; Key rings; Retail services; Online retail services; Accommodation services*. The opponent states that the CAMPER brand operates five stores in London and one in Edinburgh and has an online store targeted at the UK. It has also opened hotels in Barcelona and Berlin which are promoted to UK residents. On this basis, the opponent claims that use of the application is contrary to the law of passing off.

8. The applicant filed a defence and counterstatement, denying the grounds of opposition and putting the opponent to proof that it has used earlier marks (ii), (iii) and (iv). It puts the opponent to proof of reputation and goodwill.

9. The opponent is represented by Purdy Smith and the applicant by Patrade A/S. Only the opponent filed evidence. The matter came to be heard by video conference on 26 February 2025. Mr Mark Smith, of Purdy Smith, appeared for the opponent. The applicant filed written submissions in lieu of attendance at the hearing. I make this decision after careful consideration of all the oral submissions and the papers on file, referring to them as necessary.

Concessions from the applicant

10. In its written submissions in lieu of a hearing, the applicant concedes at pages 8 and 9 that there is genuine use in relation to the following (taken verbatim from the registered specifications):

- earlier mark (ii) 913108352: class 25 *Footwear [excluding orthopedic footwear]; sandals; beach shoes; Socks; Slippers; Sandals; Slippers; Footwear for women and men; Casual footwear*;
- earlier mark (iii) 902662450: class 25 *Footwear (except orthopaedic footwear)*;
- earlier mark (iv) 909016262: class 25 *Footwear*.

Evidence

11. The opponent's evidence comes from Esteve Freixa, who is the opponent's Group General Counsel and Secretary of the Board of Directors.³ His evidence is aimed at proving genuine use of earlier marks (ii), (iii) and (iv), proving reputation in respect of CAMPER (earlier mark (iv)) and proving goodwill in the sign CAMPER.

12. Mr Freixa states that the opponent's first UK store, operated by its UK subsidiary Floral Ltd, was opened on 1 October 1995 in Covent Garden and that the opponent has consistently used CAMPER and various associated logos in the UK since that date. Two more London stores were opened in 1998 in Brompton Road and Old Bond Street. To mark this, the Independent ran an article on 15 May 1998.⁴ The writer refers to the opponent as being "totally different": "[t]heir concepts are unusual and curiously thought-provoking, seeming to be about life, feet, shoes, and their relationship with the floor and walking. ... In Spain everybody wears Camper, they are as ubiquitous as the Dr Marten...". The writer goes on to say:

"The shoes are certainly an acquired taste. They are resolutely casual, occasionally kooky, and come in unusual colours like blood red and corn yellow, as well as the usual black, navy and beige; some even look like drawings from cartoons, with graphic flowers and colourful crayon-like drawings. Their soles, too, are very distinctive, either thick crepe or made from moulded rubber or old tyres. But it is their core styles, particularly the best-selling Camalen canvas lace-up, Cartujano leather boots, and super-soft recycled leather moccasins,

³ Witness statement dated 16 May 2023 and exhibits.

⁴ Exhibit EBF3.

which have been around for more than 100 years, that are attracting the attention of chic-seekers eager for a new aesthetic on footwear.

[...]

Both Jean Paul Gaultier and Giorgio Armani recently bought Pelotas from the Covent Garden shop and are now confirmed fans. Ally Capellino used them for her recent catwalk show, and Hermes adopted the Cartujano boots for their stores.”

13. In 2009, the opponent opened a flagship store in London’s Regent Street. As of the date of Mr Freixa’s statement, there were three London stores: in Regent Street, Carnaby Street and Shelton Street, and one store in Edinburgh, in Hanover Street. Mr Freixa states that these locations are high-end retail locations and indicate the opponent’s status as a luxury brand. He states that the opponent began by selling high-end shoes, but branched out into other products over the years. Exhibit EBF5 comprises screenshots from the opponent’s UK website taken from the Internet Archive from 1 March 2016, showing the stylised mark and the plain word CAMPER in relation to shoes and boots. Pages 31 and 32 show bags, wallets, socks, a book, shoe care items and postcards. The screenshots provided at Exhibit EBF6 are from a month prior to the relevant date, relating to the same range of goods, and also face masks (this was during the Covid-19 pandemic).

14. Exhibits EBF7, EBF8 and EBF9 date from November 2013, 2014 and May/June 2015, all of which pre-date the period for proving genuine use, showing sailing caps, T-shirts, jackets and sunglasses. Exhibit EBF11, showing “unisex streetwear”, post-dates the genuine use period: it is dated 21 September 2021.

15. Mr Freixa states that the opponent opened an online pop-up shop on its website, camper.com, in 2020 which sold vases, bowls, T-shirts, wine and olive oil. Exhibit EBF10 comprises an article dated 29 September 2020 in *British GQ*. It is entitled “Forget flying. Camper is bringing the Med to you”. Vases are priced at £87 and £700, bowls at £700 and £350, the T-shirt at £26, wine at £22 and £13 and olive oil at £13.

16. Mr Freixa states that the opponent, as well as selling directly to UK consumers, sells its goods via third party retailers such as ASOS, FARFETCH, Fenwick, Next, John Lewis and Zalando. Exhibit EBF12, from the Internet Archive, is dated 15 April 2017 and shows the opponent’s shoes on Zalando’s website, with the plain word version “Camper”. Exhibit EBF13, from the Internet Archive, shows the opponent’s footwear and the word-only and composite version of its marks, on 30 October 2020 on the fashion website, Lyst. Mr Freixa states that Lyst aggregates listings from its partnered brands or retailers and that the prints show the opponent’s goods being sold by a number of websites, including AllSole, ASOS, FARFETCH, The Hut and YOOX. Screenshots from the ASOS website, dated 22 November 2020 and from the Internet Archive, are shown in Exhibit EBF14. Women’s boots are priced at around £150. The plain word Camper is shown in the screenshots. An explanatory paragraph about the opponent’s men’s footwear is also included in the ASOS screenshots: I note that it refers to the footwear as “totally unique, with futuristic shapes and urban-inspired detailing.”

17. Mr Freixa provides the following UK turnover figures (by its UK subsidiary, Floral Ltd):

Year	Turnover
2016	£8,137,828
2017	£8,299,961
2018	£8,601,290
2019	£8,329,165
2020	£5,663,142

18. Mr Freixa states that the “overwhelming majority of turnover was generated by sales of our products with a small part being attributable to rental income (between £45K and £140K each year).⁵ He also states:

⁵ Copies of the accounts for Floral Ltd for the years 2016 to 2020 are shown in Exhibit EBF16.

“The vast majority of the turnover figures ... would have been generated through footwear, headgear, and clothing sold under trademark UK00909016262 (predominantly footwear).”

19. A similar statement is made in respect of earlier mark (ii). Exhibit EBF15 comprises invoices from the UK subsidiary to UK retailers in Trowbridge, Leeds and London during 2019 and 2020. The red and white stylised mark is shown at the top of the invoices. The identity of the items sold is not specified on the invoices themselves. However, Mr Freixa refers to the invoices in Exhibit EBF15 in paragraph 21 of his witness statement in the following way:

“Evidence of such usage [of earlier mark(ii)] is provided by ... the invoices provided at Exhibit EBF15 [footwear]...”.

20. I read that as a statement that the invoices relate to footwear. I can also see from Exhibits EBF5 and EBF12 that, for example, “CAMI” is a style of shoe, and “Balloon” a sandal, which appear on pages 12 and 16 of the invoice exhibit.

21. Mr Freixa states that the opponent has also expanded into hotels through its Casa Camper properties in Barcelona (from 2005) and Berlin (from 2009). He states UK customers can, and have, booked rooms in these hotels. Exhibit EBF17 comprises a screenshot of the UK homepage of casacamper.com from the Internet Archive, dated 9 February 2020; and Exhibit EBF18 comprises screenshots from booking.com from the Internet Archive, dated January 2017, showing the Barcelona and Berlin hotels. Casa Camper is handled via a subsidiary of the opponent. Exhibit EBF is a screenshot of a review of Casa Camper Barcelona in *The Telegraph*, from the Internet Archive, dated 7 June 2016. An article dated 17 August 2016 in *Glossy* magazine is about the opponent’s expansion into hotels and its successful establishment as a lifestyle brand, rather than just a fashion brand.⁶ However, this appears to be a US publication.

22. Mr Freixa provides the following UK marketing figures, explaining that the 2020 figure is lower because of the Covid-19 pandemic:

⁶ Exhibit EBF39.

Year	Marketing spend
2018	£763,405
2019	£735,757
2020	£242,104

23. He states that “the vast majority of the marketing spend ... would relate to footwear, headgear, and clothing sold under trademark UK909016262 (predominantly footwear)”. A similar statement is made in respect of earlier mark (ii). Mr Freixa gives examples of UK promotion of the marks:

- Exhibits 19 and 20: articles from April 2010 about the opponent’s sponsorship of Team New Zealand in the Volvo Ocean sailing race and September 2011 about the Camper-branded team yacht visiting central London;
- there was a Camper exhibition at the London Design Museum entitled ‘Life On Foot’, from May to November 2015: Exhibits EBF22, EBF23 and EBF24. In a screenshot from the museum’s website, Camper is described as a “maverick and much-loved Spanish footwear brand”, with “instantly-recognisable products” with a “non-conformist, playful approach to advertising”;
- the 2017 advertising campaign on (and in) London taxis:⁷



⁷ Exhibit EBF27.

- Exhibit EBF29 is an article from HYPEBEAST in January 2018 about the opponent’s collaboration with designer Kiko Kostadinov who showed two pairs of Camper boots at his London Fashion Week show;
- Exhibit EBF30 comprises examples of press coverage of the opponent’s footwear in publications such as *Elle* and *The Guardian*;
- the opponent has Facebook and Instagram pages, but these are not UK specific. However, in common with the majority of the evidence, they are focussed on footwear.⁸

Proof of use

24. Section 6A of the Act states:

“(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

⁸ Exhibits EBF31 to EBF 34.

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

25. As the earlier marks subject to the proof of use provisions are comparable marks, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant.⁹ It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

⁹ On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM or International Registration designating the EU (“IR(EU)”). The earlier marks subject to proof of use were originally protected in the UK as EUTMs. They are now comparable marks which are 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 retain their original filing and registration dates.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union.”

26. The relevant period for proof of use is the five years ending on the EU filing date of the contested application: 2 December 2015 to 1 December 2020. The burden of proof lies with the opponent, as the proprietor of the earlier marks, to show genuine use because Section 100 of the Act states:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

27. Apart from the defence and counterstatement, the only documentation filed by the applicant is its written submissions in lieu of a hearing. Those submissions contain multiple detailed criticisms going to the accuracy and sufficiency of the opponent's evidence. Although the onus is on the opponent to prove use by filing its best case as evidence in chief, where the applicant appears to have avoided criticising the accuracy or sufficiency of it during the evidence rounds, only to mount multiple challenges to its accuracy and sufficiency after the evidence rounds have closed, there is potential for unfairness. The criticisms include a misunderstanding of the dating in the Internet

Archive prints. The applicant submits that the screenshots in Exhibits EBF5 and EBF6 are dated 22 and 23 April 2023, whereas the witness statement indicates that the use is older. The prints were indeed taken on these dates, but the prints include a dating format at the bottom of each page; for example:



28. This is a standard format found in results from the Internet Archive. The relevant numbers are read from left to right to obtain the date: 20160301. This is to be interpreted as 01032016: i.e. 01 03 2016, or 1 March 2016.¹⁰ If the applicant had raised this issue in written submissions during the evidence rounds, the opponent could easily have explained the dating in reply.

29. Another criticism is that the evidence about hotel services forms no part of the “relevant proceedings”. This is incorrect because the section 5(4)(a) ground relies on “accommodation services”.

30. Tribunal Practice Notice 5/2007 (“TPN 5/2007”) concerns the procedure for parties to challenge evidence in the IPO’s tribunal. It says, at paragraph 2:

“2. [...] If the evidence consists, as it should, of fact, then the party wishing to have it disbelieved must raise the issue in a way that permits the witness to answer the criticism that his or her evidence is untrue. This can be done by filing written submissions stating why the witness should not be believed in a time frame which gives the witness an opportunity to supplement his or her evidence (if he wishes) before the matter falls to be decided.

¹⁰ See also the decision of Dr Brian Whitehead in *Ben Arnold v Aikon International* Case BL O0408/23, at paragraphs 33 and 34.

3. Normally, this will mean the opposing party making written observations within the period allowed for the filing of its evidence in response to the witness's evidence explaining why the witness should not be believed. Alternatively, the opposing party can file factual evidence in reply of its own which shows why the evidence in question should not be believed. In the further alternative, the opposing party can ask to cross-examine the witness in question at a hearing.

4. However, requesting cross-examination may be disproportionate and unnecessarily costly and burdensome, since in trade mark proceedings the evidence stages are sequential, providing opportunities to deal with points during the proceedings (see the comments of Richard Arnold QC, as the Appointed Person, in *BRUTT Trade Marks* [2007] RPC 19). Indeed, cross-examination may not be permitted if the truth or otherwise of the challenged statement manifestly has no bearing on the outcome of the case. Written submissions, or evidence which contradicts the witness's evidence, are therefore likely to be the most satisfactory ways to dispute the factual evidence of the other side in the majority of cases.

Where prior notice or cross-examination is not a pre-requisite for an invitation to a Hearing Officer to treat a witness's evidence as untrue

5. Factual evidence which is obviously incredible can be challenged on the basis that it is untrue whether or not the witness has been cross examined or given prior notice of the challenge to the truth of his or her evidence.”

31. That TPN was published in 2007 and its substance is now to be found within the IPO's Trade Marks Work Manual at 4.8.9 "Challenging evidence". The Supreme Court has given guidance on the subject in *Tui v Griffiths*.¹¹ At paragraph 67 of the judgment, Lord Hodge said that it is acceptable to reject the evidence of a witness if they have been given sufficient opportunity to respond to criticism of their evidence. In the present case, the opponent has had no opportunity to respond to the applicant's criticism of its evidence. The nature of the challenge must not become apparent for

¹¹ [2023] UKSC 48.

the first time at the hearing. Therefore, the question is not whether Mr Freixa is telling the truth, but whether his narrative and his exhibits are sufficient to show that the earlier marks were put to genuine use in the relevant period.

32. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:¹²

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

¹² 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.

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use:

Ansul at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

33. The applicant has conceded that the opponent has made genuine use of its marks during the relevant period in relation to footwear (and the specific goods in the specifications set out at paragraph 10 of this decision). I do not therefore need to address these particular goods.

34. In *New Yorker SHK Jeans v OHIM*, the General Court stated at paragraph 53 that:¹³

“Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned.... However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts...”.

¹³ Case T-415/09, citations omitted.

35. Mr Freixa states that the earlier marks would have been used in a variety of “other contexts” beyond the examples provided in his exhibits “and probably on other goods and services” covered by the trade mark registrations. He cites the distance in time as being a reason for not being able to recover the relevant evidence. He states that, for earlier marks (ii) and (iv), the vast majority of the turnover figures “would have been generated through footwear, headgear, and clothing ...(predominantly footwear)”. Mr Freixa makes the same statement about marketing spend. In relation to earlier mark (iii), Mr Freixa states that it “was likely used throughout the UK in relation to some or all of the following during the relevant period: (a) in Class 18 in relation to backpacks; card cases [notecases]; wallets; satchels; shopping bags; (b) in Class 25 in relation to ready-made clothing for women, men and children; footwear (except orthopaedic footwear); headgear; and (c) in Class 35 in relation to retail and wholesale of the abovementioned products”. Mr Freixa then highlights use of earlier mark (iii) in relation to footwear only. As noted earlier, the invoices are all for footwear, as stated at paragraph 21 of the witness statement.

36. In my view, these statements amount to unsupported assertions and are probabilities and suppositions rather than solid and objective evidence of use. I cannot ascertain from the assertions the level of use in relation to goods other than footwear, or in what manner the use was made. I have stood back and looked at the evidence in the round to establish whether an accumulation of items may, nevertheless, support a finding of genuine use in relation to goods and services other than for footwear. I will come back to the services below, but for now I make findings about goods other than footwear. The vast majority of the evidence is in relation to footwear. Mr Freixa states that the invoices are for footwear. He states that the turnover and marketing was predominantly in relation to footwear. The turnover figures are not particularised. In *W Sternoff LLC v Peter Kertels*, Mr Phillip Johnson, sitting as the Appointed Person, considered a case in which the turnover figures were not particularised.¹⁴ He said:

“26. Where global sales figures are provided for multiple goods sold under one trade mark this is not going to be evidence of use for any of those goods. The sales could all be in relation to good A or all in relation to good B or a split

¹⁴ Case O/0984/25.

between the two. This is why particularisation is so important as without it the figures provide no evidence of use for either good A or good B. The same applies where the same good is sold under trade mark A and trade mark B.

27. Evidence of sales is only useful for establishing genuine use where it sets out the sales revenue for a particular and identified good (or service) and it is clear that that good or service is sold under the trade mark. Only where there is only one good being sold and it is sold under only one trade mark can global figures be sufficient.”

37. In *Rituals International Trademarks B.V. v Amazon Technologies Inc*, Mr Iain Purvis QC said:¹⁵

“23. I see no difficulty with an informed witness summarizing in tabular form the records of his company as to the sales of a particular brand in the UK without exhibiting the actual records. Nor do I see any difficulty with them giving a general account of the lines of products sold under a brand, with some support in the form of archived website extracts, without providing documentation showing each and every item, when it was sold and for what price.”

38. The problem in the present case is that whilst Mr Freixa is clearly an informed witness, his general account of goods other than footwear is vague, using terminology such as “probably” and “likely” used, and there is no breakdown of the turnover between the different categories of goods. The sailing clothing predates the relevant period. The pop-up shop which sold a very limited range of t-shirts was, by its nature, temporary and does not show that attempts were made to create or preserve an outlet for clothing when viewed alongside the statements made about the turnover and marketing and considering that the pop-up took place only in the last two months of the relevant period. The evidence in relation to bags, wallets, socks, a book, shoe care items and postcards suffers from the same deficiencies. The turnover is not particularised and it is stated as being “predominantly” in relation to footwear. There

¹⁵ Case O/005/21.

are no invoices showing any of these goods. It is not possible for me to gauge the level of sales of these goods.

39. The applicant has made some submissions about the reliance by the opponent upon its class 35 services. It says:

“Additionally, for retail, wholesale and online services in class 35, these services are provided for the benefit of others. The “others” benefiting from these services are the various manufacturers looking for an outlet for their goods. As the opponents sells goods which they themselves are the manufacturer of, be it in a physical shop or on a webshop of their own, there is no use of retail services in class 35 as the service is not provided on the benefit of another manufacturers or economic undertakings [sic]. The sale by the opponent of its own goods is not an independent service but an activity covered by the protection conferred by registration for the goods in class 18 and 25. It would not be appropriate to equate the protection conferred by registration for goods in class 18 and 25 with that conferred by registration for retail services in class 35. While manufacturers may provide ancillary services (such as maintaining an outlet with shop assistants, advertising, consultancy, after-sales services, etc.) in the course of the sale of their own goods, such activities fall within the concept of a remunerated ‘service’ only if they do not form an integral part of the offer for sale of the goods. Consequently, if the opponent uses their trademark in relation to activities that form an integral part of the offer for the sale of its own goods, there is no real use for retail services of such goods in class 35. For the opponent to maintain their retail services in class 35, they would have to prove sale of goods offered by other traders in addition to their own goods, and the goods sold by the opponent on behalf of others would have to be more than token, which the opponent has not done in this case.”

40. In *Live Unlimited Limited v Live Roupas Esportiv AS Ltda*, Mr Phillip Johnson, sitting as the Appointed Person, considered a case in which a single shop sold goods branded the same as the shop signage, Live!¹⁶ Mr Johnson said (emphasis added):

¹⁶ Case BL O/1202/24.

“11. Before proceeding, it is useful to set out some of the principles that have been established in relation to retail services:

(1) The objective of the retail trade is the sale of goods to consumers. Nevertheless, retail services are directed to both the end consumers and the manufacturer of the product and intermediaries operating upstream from retail sale: C-418/02 *Praktiker Bau- und Heimwerkermärkte AG* [2005] ECR I-5873, [34]; T-23/20 *FF IP v EUIPO*, EU:T:2021:523, [53]; T-372/21 *Sympatex Tech Gmbh*, EU:T:2023:111, [89];

(2) The retail trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor: *Praktiker Bau*, [34];

(3) The meaning of the term “retail services” has a wide scope and the Court has not given an exhaustive definition of what those services comprise: *Praktiker Bau*, [48]; C-400/14P *Basic AG*, EU:C:2015:514 at [56];

(4) The provision of retail services without selling certain specific goods would make no sense: T-116/06 *Oakley* [2008] ECR II-2455, [54]; T-204/14 *Victor Int*, EU:T:2016:448, [108];

(5) It is necessary to specify the goods or services or type of goods or services which are the subject of the retail services: *Praktiker Bau*, [52]; C-420/13 *Netto MarkenDiscount AG*, EU:C:2014:2069, [39] and [40]; 4

(6) Retail services are generally offered in the same places as the goods to which they relate are offered for sale: *Oakley*, [48]; *Victor Int*, [110];

(7) Retail services can extend to things like providing shopping arcades, the provision of which involves making the shopping environment around the shop more attractive: T-123/16 *Tulliallan Burlington Ltd*, EU:T:2017:870, [32] to [34].

(8) Retail services can include the retailer selling own brand goods; indeed it might be inappropriate to make assumptions as to the branding which might be applied to the goods: *Netto Marken-Discount AG*, [39]; C-421/13 *Apple Inc*, EU:C:2014:2070, [25] and [26]; *MissBoo* (O/391/14), [12].

...

14. Second, I think it is immaterial that a shop sells own-brand goods only. Retail services can be provided whether the goods or services sold by the retailer are only own-brand goods, a mixture of own-brand and third party goods, or where the retailer sells third party goods only. The activity of retailing is similar whether the goods or services are own brand or produced by a third party.”

41. It is, therefore, not fatal to the opponent’s case that its shops and website sell only its own goods. The opponent’s unchallenged evidence is that it has three shops in prominent London retail locations (Regent Street, Carnaby Street and Shelton Street) and one in Edinburgh (Hanover Street). I do not regard the unparticularised turnover figures as problematical when considered in the context of the opponent’s retailing service because a shop or website’s turnover is intrinsically linked to the goods which it sells. However, as with the opponent’s evidence in relation to goods, the evidence only supports a finding of genuine use in relation to retail services for footwear.

42. The applicant has not conceded that there has been genuine use in relation to the various examples of parts and fittings in the opponent’s specifications. I agree that there has been no genuine use for these goods. I also find that there has been no genuine use in relation to *Boots for sports*; *Wooden shoes*; *Booties*; *Gymnastic shoes*; and *Sports shoes*. However, I do not agree with the applicant that there has been no genuine use in relation to the following goods, which it has omitted from its concessions:

- earlier mark (ii) 913108352: *Espadrilles; Boots.*

43. There is clear use of boots in, for example, Exhibit EBF5. Furthermore, it would be pernicky, given the inclusion of sandals and beach shoes to exclude espadrilles, which are commonly worn as beach shoes and as sandals.¹⁷ It would also be pernicky not to permit the opponent to rely upon retail services conducted via catalogues, mail order and telephone, given its retail presence in physical shops as well as online.

44. The opponent may rely upon the following goods and services:

- earlier mark (ii) 913108352:

Class 25: Footwear [excluding orthopedic footwear]; sandals; beach shoes; Socks; Espadrilles; Boots; Slippers; Sandals; Slippers; Footwear for women and men; Casual footwear.

Class 35: Retailing in shops, via global computer networks, via catalogue, via mail order, via telephone of footwear (except orthopaedic footwear), sandals, footwear for the beach, socks, esparto shoes or sandals, lace boots, boots, ankle boots, slippers, sandals, slippers, footwear for women and men, casual footwear.

- earlier mark (iii) 902662450:

Class 25: Footwear (except orthopaedic footwear).

Class 35: Retail of footwear.

- earlier mark (iv) 909016262:

Class 25 Footwear.

¹⁷ *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834.

45. Of course, the opponent can rely upon the entirety of its earlier mark (i) for section 5(2)(b) because it is not subject to the use provisions of section 6A of the Act. Earlier mark (i) is the same as earlier mark (ii) except that earlier mark (i) does not have a colour limitation.

Section 5(2)(b) of the Act

46. Section 5(2)(b) states:

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

[...]

(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.”

47. 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.”¹⁸

48. The following principles for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are taken from the decisions of the Court of Justice of the European Union (“CJEU”) 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*

¹⁸ This section also applies to the grounds raised under sections 5(3) and 5(4)(a) of the Act.

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.

The principles

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

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

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

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

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

Comparison of goods and services

49. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* 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.”

50. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

51. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, the General Court (“GC”) stated that complementary means:¹⁹

“82 ... there is a close connection between [the goods], 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

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

“... 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.”

53. In *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16 Jacob J (as he then was) held:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They

¹⁹ Case T-325/06, the General Court.

²⁰ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods and services.

should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

54. The law requires that goods and services be considered identical where one party’s description of its goods and services encompasses the specific goods and services covered by the other party’s description (and vice versa): *Gérard Meric v OHIM*.²¹

55. The goods and services for comparison are:²²

Earlier marks	Applicant’s mark
<p data-bbox="204 801 564 835"><u>Earlier mark (i) 3238124:</u></p> <p data-bbox="204 857 727 1384">Class 18: <i>Shoulder belts; trunks [luggage]; briefcases; suitcases; beach bags; satchels; hand bags; handbags made of leather; canvas bags; purses; cases of leather or leatherboard; wallets; leather credit card wallets; luggage; bags; key bags; carrying cases for documents; credit-card holders; rucksacks; coin purses; card holders, duffel bags.</i></p> <p data-bbox="204 1462 735 1877">Class 25: <i>Ready-made clothing for women, men and children; footwear [excluding orthopedic footwear]; headwear; headbands (clothing); swimming costumes; scarves; beach shoes; belts (clothing); coats; skirts; hats; caps [headwear]; gloves (clothing); rainsuits; socks;</i></p>	<p data-bbox="774 801 1310 1435"><i>Import and export services; Retail services, wholesale services, online retail services and online wholesale services in relation to caravans, camping vehicles, trailers, camping cars, mobile homes; Retail services, wholesale services, online retail services and online wholesale services in relation to parts and fittings for vehicles, trailer supports, articulated support frames adapted for use with</i></p> <p data-bbox="774 1462 1305 1877"><i>vehicles, booms for vehicles, fitted vehicle covers; Retail services, wholesale services, online retail services and online wholesale services in relation to propulsion and maneuvering mechanisms and electric motor powered propulsion units</i></p>

²¹ Case T-33/05, General Court.

²² I have not corrected the spelling mistakes in the parties’ specifications.

beachwear; bonnets; jackets; dresses; blouses; bodices; berets; boots; half-boots; shoes; shirts; tee-shirts; slippers; sneakers; clogs; gabardines; sweaters; parkas; sandals.

Class 35: Advertising; business management; business administration; import-export agencies; assistance in management of business activities; business management of hotels; public relations services; retailing and wholesaling in shops and via global computer networks of shoulder belt, trunks [luggage], briefcases, suitcases, beach bags, satchels, hand bags, handbags made of leather, canvas bags, purses, cases of leather or leatherboard, wallets, leather credit card wallets, luggage, bags, key bags, carrying cases for documents, credit-card holders, rucksacks, coin purses, card holders, duffel bags, ready-made clothing for women, men and children, footwear [excluding orthopedic footwear], headwear, headbands (clothing), swimming costumes, scarves, beach shoes, belts (clothing), coats, skirts, hats, caps [headwear], gloves (clothing), rainsuits, socks,

for moving caravans and trailers; Retail services, wholesale services, online retail services and online wholesale services in relation to hand tools and implements (hand-operated), cutlery, razors and clamping wedges; Retail services, wholesale services, online retail services and online wholesale services in relation to apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Retail services, wholesale services, online retail services and online wholesale services in relation to leather and imitations of leather, animal skins, umbrellas, parasols, walking sticks and saddlery; Retail and wholesale services, including via the internet in relation to furniture, mirrors, picture frames, Wooden furniture, boxes of wood, wooden bins, Wooden picture mouldings, Photograph frames of wood, Wood planters, wooden beds, Wall decorations of wood, Packaging containers made of wood, Wood door handles, Door stops of wood, Garden furniture manufactured from wood, Dowels, not of metal, Domestic furniture made of

beachwear, bonnets, jackets, dresses, blouses, bodies, berets, boots, half-boots, shoes, shirts, tee-shirts, slippers, sneakers, clogs, gabardines, sweaters, parkas, sandals, magazines and publications, shoe wax, shoe polish, shoe cream, laces for footwear, jewellery, imitation jewellery, timepieces, eyeglasses, eyeglass cases, eyeglass chains, eyeglass cords, covers for cellular phones, protective covers and cases for tablet computers, cases and covers for laptops.

Earlier mark (ii) 913108352:

Class 25: Footwear [excluding orthopedic footwear]; sandals; beach shoes; Socks; Espadrilles; Boots; Slippers; Sandals; Slippers; Footwear for women and men; Casual footwear.

Class 35: Retailing in shops, via global computer networks, via catalogue, via mail order, via telephone of footwear (except orthopaedic footwear), sandals, footwear for the beach, socks, esparto shoes or sandals, lace boots, boots, ankle boots, slippers, sandals, slippers, footwear for women and men, casual footwear.

wood, Boxes of wood or plastic, Furniture made from substitutes for wood, Corks, Cork memo boards, Pipe clamps of plastics, Screens of reed, Collars [non-metallic] for fastening pipes, Collars, not of metal, for fastening pipes, Pipe fasteners, connectors and holders, non-metallic, Reeds [plaiting materials], Wickerwork, Decorative baskets made of wicker, Decorative baskets made of wood, Cane furniture, Containers made of cane, Bamboo canes, Cane clips of nonmetallic materials, Horn, unworked or semiworked, Artificial horns, Furniture of plastic materials, Boxes made of plastic, Plastic furniture for gardens, Portable water carriers [containers] made of plastics, Plastic ramps for use with vehicles, Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic; Retail services, wholesale services, online retail services and online wholesale services in relation to beds, bedding, mattresses, pillows and cushions; Retail services,

Earlier mark (iii) 902662450:

Class 25: *Footwear (except orthopaedic footwear).*

Class 35: *Retail of footwear.*

wholesale services, online retail services and online wholesale services in relation to household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), brushmaking materials, articles for cleaning purposes, steelwool, unworked or semiworked glass, glassware, porcelain and earthenware, drinking bottles, frying pans, isothermic bags, cooking pots and clothes drying racks; Retail services, wholesale services, online retail services and online wholesale services in relation to ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags, padding and stuffing materials, raw fibrous textile materials and tents for caravans; Retail services, wholesale services, online retail services and online wholesale services in relation to carpets, rugs, mats and matting, linoleum and other materials for covering existing floors and wall hangings; Retail services, wholesale services, online retail services and online wholesale services in relation to games and playthings, gymnastic and sporting articles, decorations for Christmas trees; Retail services, wholesale services, online retail

	<p><i>services and online wholesale services in relation to high pressure washers, pumps, valves for pumps, compressors, compressed air engines, pumping apparatus [machines]; Retail services, wholesale services, online retail services and online wholesale services in relation to aerials, masts for aerials, aerial converters, aerial amplifiers, antenna boosters, component parts for aerials, masts for wireless aerials; Retail services, wholesale services, online retail services and online wholesale services in relation to apparatus and instruments for the conduction, distribution, change, storage, control and controlling electric current, batteries and accumulators, electric remote controls and control panels; Retail services, wholesale services, online retail services and online wholesale services in relation to hand towels, bath sheets, towels of textile sold in pack form, towels of textile, hand towels of textile, table linen, oilcloth for use as tablecloths, fabric table toppers, bed clothes and blankets, blankets for outdoor use, bed covers, lap rugs, textiles, towelling, textile material, waterproof textile fabrics, table linen, household</i></p>
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	<p><i>textile articles. All of the aforementioned services are to be used for camping and outdoor use.</i></p>
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56. The first thing to say is that the applicant has added a positive limitation to its specification of “all of the aforementioned services are to be used for camping and outdoor use.” It is difficult to see how this limitation could be effective in relation to, for example, “Retail services, wholesale services, online retail services and online wholesale services in relation to leather and imitations of leather, animal skins, umbrellas, parasols, walking sticks and saddlery; Retail and wholesale services, including via the internet in relation to furniture, mirrors, picture frames, Wooden furniture, boxes of wood, wooden bins, Wooden picture mouldings, Photograph frames of wood, Wood planters, wooden beds, Wall decorations of wood, Packaging containers made of wood, Wood door handles, Door stops of wood, Garden furniture manufactured from wood, Dowels, not of metal, Domestic furniture made of wood, Boxes of wood or plastic, Furniture made from substitutes for wood, Corks, Cork memo boards... Retail services, wholesale services, online retail services and online wholesale services in relation to hand towels, bath sheets, towels of textile sold in pack form, towels of textile, hand towels of textile, table linen, oilcloth for use as tablecloths, fabric table toppers, bed clothes and blankets, blankets for outdoor use, bed covers, lap rugs, textiles, towelling, textile material, waterproof textile fabrics, table linen, household textile articles”. There is no difference between retail services of these goods whether for use in the home or in a caravan.²³

57. The opponent has cover under earlier marks (i) for import-export agencies. This is identical to the applicant’s *Import and export services; all of the aforementioned services are to be used for camping and outdoor use.*

58. The subject goods of the opponent’s retailing and wholesaling services are not the same as the subject goods of the applicant’s retail and wholesale services, with the exception of retailing of bags in the applicant’s specification and the bags covered by the opponent’s class 18 specification in earlier mark (i), which I will come back to.

²³ See Tribunal Practice Notice 1/2024, paragraph 19.

What is at issue is whether, and to what extent, there is similarity between retail and wholesale services for different goods.

59. In *Praktiker Bau v Heimwerkermärkte AG*, the CJEU stated that:²⁴

“...the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.”

60. Retail services relate to the selection and marketing of goods rather than the goods themselves. There will usually be some similarities in the nature and purpose of retail services involving the selection of a range of goods and marketing those goods to the public, either in physical stores or online. However, it is also important to note that in *Praktiker Bau* the CJEU stated that:

“48. the likelihood of confusion must be assessed globally, taking into account all the factors relevant to the circumstances of the case (see Case C-251/95 SABEL [1997] ECR I- 6191, paragraph 22, and Case C-39/97 Canon [1998] ECR I-5507, paragraph 16). In the context of that global assessment, it is possible to take into consideration, if need be, the particular features of the concept of ‘retail services’ that are connected with its wide scope, having due regard to the legitimate interests of all interested parties.

49. In those circumstances, for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. To identify those services, it is sufficient to use general wording such as ‘bringing together

²⁴ Case C-418/02, at paragraph 34.

of a variety of goods, enabling customers to conveniently view and purchase those goods’.

50. However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings.....

51. Such details will make it easier to apply Articles 4(1) and 5(1) of the directive without appreciably limiting the protection afforded to the trade mark.”

61. The requirement to identify the goods to which the retail services relate is therefore an important aspect of defining the extent of the protection to which such trade marks are entitled. This means that retail services relating to goods X are not the same as retail services relating to goods Y. However, that does not mean that retail services cannot be similar if they relate to different categories of goods that are likely to be marketed by the same kind of retailer.

62. There is a certain degree of similarity between the nature, purpose and method of use of retail services relating to most consumer goods. However, this may not apply if the retail service relates to technical goods. For example, the differences between the nature, purpose and method of use of retailing of vehicles compared to the retailing of consumer goods may be so marked that there is no meaningful similarity between such services. At the hearing, Mr Smith conceded that there was no likelihood of confusion in relation to the applicant’s vehicular retail and wholesale services owing to the lower level of similarity.²⁵ Consequently, I find that the section 5(2)(b) ground fails in relation to the applicant’s *Retail services, wholesale services, online retail services and online wholesale services in relation to caravans, camping vehicles, trailers, camping cars, mobile homes; Retail services, wholesale services, online retail services and online wholesale services in relation to parts and fittings for vehicles, trailer supports, articulated support frames adapted for use with vehicles, booms for vehicles, fitted vehicle covers; Retail services, wholesale services, online retail*

²⁵ Hearing transcript, page 22, lines 17 to 20.

services and online wholesale services in relation to propulsion and maneuvering mechanisms and electric motor powered propulsion units for moving caravans and trailers. I also consider that there is no meaningful similarity between the opponent's retailing and wholesaling services, or between any of its goods in classes 18 and 25, and the following of the applicant's services because they are unlikely to be marketed by the same kind of retailer or wholesaler:

Retail services, wholesale services, online retail services and online wholesale services in relation to clamping wedges, ventilating, water supply and sanitary purposes, Dowels, not of metal, Pipe clamps of plastics, Collars [non-metallic] for fastening pipes, Collars, not of metal, for fastening pipes, Pipe fasteners, connectors and holders, non-metallic, Reeds [plaiting materials], Horn, unworked or semiworked, Plastic ramps for use with vehicles, brushmaking materials, unworked or semiworked glass, ropes, nets, tents, awnings, tarpaulins, sashes, sacks, padding and stuffing materials, raw fibrous textile materials and tents for caravans; Retail services, wholesale services, online retail services and online wholesale services in relation to high pressure washers, pumps, valves for pumps, compressors, compressed air engines, pumping apparatus [machines]; Retail services, wholesale services, online retail services and online wholesale services in relation to aerials, masts for aerials, aerial converters, aerial amplifiers, antenna boosters, component parts for aerials, masts for wireless aerials; Retail services, wholesale services, online retail services and online wholesale services in relation to apparatus and instruments for the conduction, distribution, change, storage, control and controlling electric current, batteries and accumulators, electric remote controls and control panels; All of the aforementioned services are to be used for camping and outdoor use.

63. As there is no similarity between these services and any of the opponent's goods and services, the opposition fails under section 5(2)(b) against all the applicant's services listed in the previous paragraph.

64. With regards to retail and wholesale services in relation to bags, these are similar to the opponent's *trunks [luggage]; briefcases; suitcases; beach bags; satchels; hand*

bags; handbags made of leather; canvas bags; cases of leather or leatherboard; wallets; luggage; bags; key bags; carrying cases for documents; rucksacks; duffel bags. The applicant's specification is set out so that the subject goods of the retailing and wholesaling services are approximated to the class in which they fall. For example, *Retail services, wholesale services, online retail services and online wholesale services in relation to ropes, string, nets, tents, awnings, tarpaulins, sats, sacks and bags, padding and stuffing materials, raw fibrous textile materials and tents for caravans:* the subject goods fall within class 22. This includes bags. The applicant's retailing and wholesaling of bags, even if they are of the sort falling in class 22, is still similar to the opponent's various types of bags in class 18. This is because the class in which the goods have been applied for as a tool to interpret the meaning of the words used to describe them does not apply to descriptions of goods in the specification of a retail services mark in class 35. Accordingly, it is necessary to construe the meanings of the descriptions of goods forming part of the applicant's retail services specification by reference to their ordinary natural meaning; i.e. the retailing and wholesaling of bags does not distinguish between different types of bags. The applicant's goods are identical to the subject goods of the retail service. The goods are indispensable to the retail services relating to them. In addition to the complementary relationship between the goods and the retailing and wholesaling thereof, there is an overlap in the trade channels through which the goods and services reach the average consumer.²⁶ They are similar to a medium degree.

65. There is a low to medium degree of similarity between all of the remaining services in the applicant's specification and the retailing and wholesaling services in the opponent's class 35 specification. These are all consumer goods; in other words, they are retail and wholesale services for goods which are likely to be marketed by the same kind of retailer or wholesaler. There will be similarities in the nature and purpose, and the method of use, of retail and wholesale services involving the selection of a range of consumer goods and in offering a variety of services aimed at inducing the consumer to conclude the transaction. I bear in mind that in *Oakley, Inc v OHIM*, Case T-116/06, the General Court's findings did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods

²⁶ See *Oakley, Inc v OHIM*, Case T-116/06, GC.

as those for which the other party's trade mark was registered (or proposed to be registered).²⁷ However, there is too great a distance between the goods which are the subject of the applicant's services and the goods registered (and which can be relied upon) in the specifications of the earlier marks for me to find that they are similar goods and services. Therefore, the opponent does not appear to be in a better position in relation to any of its goods, apart from bags, than it is for its services.

Average consumer and the purchasing process

66. As the caselaw cited above indicates, it is necessary to decide who the average consumer is for the goods at issue and how they purchase them. "Average consumer" in the context of trade mark law means the "typical consumer."²⁸ The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose 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 or services in question: *Lloyd Schuhfabrik Meyer*. In *Lidl Great Britain Limited & anor v Tesco Stores Limited & anor* [2024] EWCA Civ 262, Lord Justice Arnold explained:

"16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests involved, including the interests of trade mark owners, their competitors and consumers.

17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent

²⁷ *Tony Van Gulck v Wasabi Frog Ltd* ("Miss Boo"), BL O/391/14, Mr Geoffrey Hobbs, sitting as the Appointed Person.

²⁸ *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).

consumers who have a spectrum of attributes such as age, gender, ethnicity and social group.

18. Thirdly, assessment from the perspective of the average consumer is designed to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence.

19. Fourthly, the average consumer's level of attention varies according to the category of goods or services in question.

20. Fifthly, the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.”²⁹

67. The average consumer for the services provided by import-export agencies are likely to be mostly business users, who will pay a reasonable degree of attention to the selection process. The purchasing process is likely to be primarily visual (e.g. via websites) although there may also be an aural element if arrangements are made by telephone. The remainder of the parties' goods and services which I have found to be similar (bags being the only goods) will be purchased by the general public, which will pay no more than a medium level of attention to the purchasing process. This is because the selection of a retail or wholesale service for consumer items will entail considerations such as range and choice, value for money, returns policies, trustworthiness and ease of use of the service. The purchasing process will be primarily visual, but with an aural aspect where over-the-counter purchases are made and advice is sought. I do not accept the applicant's submission that its services are limited to caravanners and outdoor enthusiasts for the reasons given earlier. Even if that were the case, they are a subset of the general public which would also be the average consumer for the opponent's bags and its services.

²⁹ Approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc and anor* [2025] UKSC 25, at paragraph 30.

Comparison of marks

68. *Sabel BV v. Puma AG* 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.”

69. 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.

70. Given the outcome of the comparison of goods and services, following the proof of use conclusion, it is only necessary to compare the applicant's mark with earlier mark (i). The marks to be compared are:

Opponent's mark	Applicant's mark
	

71. Both marks contain a single stylised word, CAMPER. Neither are limited to colour. CAMPER in the earlier mark appears on a red rectangular background which has a curved base, itself superimposed upon a very pale pink/beige rectangular background. CAMPER in the applicant's mark is dark green, has the C and A elided, and a small beige triangle in the base of the A, rather than a cross-bar. Although there are these

additions in both marks, the dominant and distinctive component of the parties' marks is CAMPER.

72. Visually, the marks are similar to at least a medium degree, taking into account the dominance of CAMPER, which is by far the largest element in each mark, but also the differences in presentation. Aurally, the marks coincide in the word CAMPER in each mark. The other aspects of each mark will not be articulated. The marks are aurally identical.

73. CAMPER is a noun denoting somebody who camps, or is camping at a given time. The applicant submits that the stylised A in its mark resembles a tent, creating the concept of camping and the outdoor life. I am doubtful that this will resonate with the average consumer without giving the mark more consideration than is normal. However, even if the tent would be perceived, it merely reinforces the concept of a camper, a concept shared by the earlier mark. I find that the marks are conceptually identical.

Distinctiveness of the earlier mark

74. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier marks has been enhanced (i.e. more distinctiveness has been acquired) through the use made of them. If a mark has an inherently high, or an enhanced, level of distinctiveness, the likelihood of confusion is increased.³⁰

75. I will consider the inherent distinctive character of earlier mark (i) in relation to bags and services which I found to be similar to some of the applicant's services. The dominant element CAMPER, which is the only coinciding element, is an ordinary English word. It does not directly describe or, realistically, allude to the goods or to their characteristics. The services are not 'camper' services, and neither can the opponent's bags be said to be 'camper' bags. The earlier mark has a medium degree of inherent distinctive character.

³⁰ *Sabel BV v Puma AG*, Case C-251/95.

76. Distinctive character is a measure of how strongly an earlier mark identifies the goods or services for which it is registered, determined, according to *Lloyd Schuhfabrik Meyer & Co.*, partly by assessing the proportion of the relevant public which, because of the mark, identifies the goods or services as originating from a particular undertaking. At paragraph 23, of its judgment, the CJEU stated:

“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).”

77. Earlier in this decision, I found that the earlier marks had only been used in relation to various types of footwear and socks. These are not similar to the services in the application so any assessment of enhanced distinctive character will be redundant for section 5(2)(b). However, I will make a finding here because it will be relevant when I come to consider the section 5(3) ground.

78. The opponent’s mark has been used in the UK for thirty years in relation to footwear, so is a relatively long-lived brand. The stores are located in prime and prestigious retail areas of London and Edinburgh, and well-known third-party retailers, such as ASOS, John Lewis and Next, sell the opponent’s footwear. Advertisements for footwear have been shown on London taxis (in 2017). Over the period of 2016 to 2020, the opponent achieved sales of £40 million. In the context of the UK footwear market, which is huge, this figure is not substantial. However, I bear in mind from the evidence that the goods are somewhat niche in terms of their style (as opposed to mainstream styles), that haute couture celebrities wear the opponent’s footwear, and that the Design Museum considered the opponent’s footwear to be worthy of an

exhibition in 2015, five years prior to the relevant date. This suggests a brand of sufficient renown, even if iconic is too strong a word. Therefore, despite the turnover figures not being large, I consider that the overall picture of the evidence entitles the opponent to claim a modest uplift to the inherently medium level of distinctiveness.

Likelihood of confusion

79. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. In this case, the opponent's bags and services and the applicant's services are similar to an identical, medium or low to medium degree.

80. There are two types of confusion, direct and indirect.³¹ Direct confusion occurs where marks are mistaken for one another, flowing from the principle 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 which has been retained in the mind. The earlier mark is distinctive to a medium level, and the marks are visually similar to at least a medium degree, and aurally and conceptually identical. The overall impression is dominated by the same word, CAMPER, and stylistic differences between the marks are relatively minor. The medium level of attention during purchase, and the fact that some of the services are similar only to a low to medium degree, are factors which are not strong enough to counteract the degrees of similarity between the marks and inherent distinctiveness of the earlier mark. I find that there is a likelihood that the stylisation will be insufficiently recalled compared to the dominance of CAMPER and that the marks will be mistaken for each other. There is a likelihood of direct confusion for all the applicant's services which I have found to be similar.

³¹ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207.

81. In case I am wrong about that, I also find that there is a likelihood of indirect confusion. This type of confusion was explained by Mr Iain Purvis QC, sitting as the Appointed Person, in *Back Beat Inc v L.A. Sugar (UK) Limited*, BL O/375/10:

“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).”

82. That the three categories in that case are non-exhaustive was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others*.³²

83. Both marks contain the word CAMPER as the dominant and distinctive element. A change to the stylisation, whilst retaining the same word as the dominant and distinctive element, is commensurate with brand evolution, or a different service offering under the same umbrella: a brand extension. Average consumers will assume that the parties’ goods and services are provided by the same or an economically linked undertaking.

84. The section 5(2)(b) ground succeeds except in relation to the services set out in paragraph 62.

Section 5(3) of the Act

85. Section 5(3) states:

“(3) A trade mark which-

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 the repute of the earlier trade mark.

³² *Ibid.*

(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

86. 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 C-383/12 P, *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) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark; *L'Oreal v Bellure NV*, paragraph 44.

(g) 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.

(h) 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.

(i) 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. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it; *L'Oreal v Bellure NV*, paragraph 44.

(j) 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*).

87. The detriment to reputation pleading in the notice of opposition is that detriment will occur if the applicant's services do not meet the high standards of the opponent's mark as a luxury fashion brand. At the hearing, Mr Smith submitted that the budget image of camping would be detrimental to the luxury image of the opponent's mark. This is a shift in the pleadings for which no application to amend was made: it is not permitted.

88. The only mark relied upon under this ground is earlier mark (iv), for the word CAMPER. As set out earlier in this decision, following the proof of use assessment, the opponent may rely upon this mark for *footwear*. The marks are similar, and more so than for earlier mark (i) which had some stylistic differences compared to the contested mark. Reliance upon this ground requires evidence of a reputation amongst a significant part of the relevant public. Earlier in this decision, I found an enhanced level of distinctive character in relation to earlier mark (i). Although the evidence shows that the primary use has been in relation to earlier marks (i) and (ii) (which are the same apart from the colour limitation), I consider that the evidence shows a reputation in the word mark CAMPER.³³

89. Footwear and the applicant's services are not similar. I bear in mind that the strength of the opponent's reputation is a factor in whether the relevant public will make a link with the opposed services. I found that there was a modest uplift to enhanced distinctive character and I make the same finding here: there is a modest reputation. However, this reputation is not strong enough, nor is the mark distinctive enough, to bridge the gap between the opponent's *footwear* and the applicant's services so as to cause a link to be made between them. Without a link, there can be no damage and the ground fails.

90. The section 5(3) ground fails.

³³ See *adidas AG v EUIPO*, Case T-307/17, [2019] E.T.M.R. 44., paragraphs 54 to 59, GC.

Section 5(4)(a)

91. 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.”

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

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

93. The three elements which the opponent must show are well known. 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)."

94. 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."

95. The evidence shows that the opponent, at the relevant date, had goodwill in its business associated with the sign CAMPER in relation to *footwear; socks; online retail of footwear and socks*.³⁴ Although there is some evidence pointing to its claim to goodwill in relation to *accommodation services*, it is scant. There is no indication of turnover, no customer numbers and no supporting evidence of customers from the UK. I cannot find goodwill in relation to accommodation services. In any event, it would not put the opponent in a better position than for its section 5(2)(b) ground. Although the opponent can only rely upon retail in relation to footwear under this ground, for the reasons given earlier retailing of a good can still be similar to retailing of a different good. I do not think that the opponent's goodwill can stretch to the applicant's services which I found were dissimilar under section 5(2)(b).³⁵ I find that the opponent's section 5(4)(a) ground succeeds only to the same extent as section

³⁴ The opponent only pleaded online retail services for this ground, not physical stores.

³⁵ *Harrods Limited v Harrodian School Limited* [1996] RPC 697.

5(2)(b). Damage would follow; for example, diversion of sales and damage to reputation if the services were of inferior quality.

Overall outcome

96. The opposition succeeds against the following services for which the application is refused:

Import and export services; Retail services, wholesale services, online retail services and online wholesale services in relation to hand tools and implements (hand-operated), cutlery, razors; Retail services, wholesale services, online retail services and online wholesale services in relation to apparatus for lighting, heating, steam generating, cooking, refrigerating, drying; Retail services, wholesale services, online retail services and online wholesale services in relation to leather and imitations of leather, animal skins, umbrellas, parasols, walking sticks and saddlery; Retail and wholesale services, including via the internet in relation to furniture, mirrors, picture frames, Wooden furniture, boxes of wood, wooden bins, Wooden picture mouldings, Photograph frames of wood, Wood planters, wooden beds, Wall decorations of wood, Packaging containers made of wood, Wood door handles, Door stops of wood, Garden furniture manufactured from wood, Domestic furniture made of wood, Boxes of wood or plastic, Furniture made from substitutes for wood, Corks, Cork memo boards, Screens of reed, Wickerwork, Decorative baskets made of wicker, Decorative baskets made of wood, Cane furniture, Containers made of cane, Bamboo canes, Cane clips of nonmetallic materials, Artificial horns, Furniture of plastic materials, Boxes made of plastic, Plastic furniture for gardens, Portable water carriers [containers] made of plastics, Statues, figurines, works of art and ornaments and decorations, made of materials such as wood, wax, plaster or plastic; Retail services, wholesale services, online retail services and online wholesale services in relation to beds, bedding, mattresses, pillows and cushions; Retail services, wholesale services, online retail services and online wholesale services in relation to household or kitchen utensils and containers, combs and sponges, brushes (except paint brushes), articles for cleaning purposes, steelwool, glassware, porcelain and earthenware, drinking bottles, frying pans, isothermic bags, cooking pots and clothes drying racks; Retail services, wholesale services, online retail services and online wholesale services in relation to

string, bags; Retail services, wholesale services, online retail services and online wholesale services in relation to carpets, rugs, mats and matting, linoleum and other materials for covering existing floors and wall hangings; Retail services, wholesale services, online retail services and online wholesale services in relation to games and playthings, gymnastic and sporting articles, decorations for Christmas trees; Retail services, wholesale services, online retail services and online wholesale services in relation to hand towels, bath sheets, towels of textile sold in pack form, towels of textile, hand towels of textile, table linen, oilcloth for use as tablecloths, fabric table toppers, bed clothes and blankets, blankets for outdoor use, bed covers, lap rugs, textiles, towelling, textile material, waterproof textile fabrics, table linen, household textile articles. All of the aforementioned services are to be used for camping and outdoor use.

97. The opposition fails and the application may proceed to registration for the following services:

Retail services, wholesale services, online retail services and online wholesale services in relation to caravans, camping vehicles, trailers, camping cars, mobile homes; Retail services, wholesale services, online retail services and online wholesale services in relation to parts and fittings for vehicles, trailer supports, articulated support frames adapted for use with vehicles, booms for vehicles, fitted vehicle covers; Retail services, wholesale services, online retail services and online wholesale services in relation to propulsion and maneuvering mechanisms and electric motor powered propulsion units for moving caravans and trailers; Retail services, wholesale services, online retail services and online wholesale services in relation to clamping wedges; Retail services, wholesale services, online retail services and online wholesale services in relation to ventilating, water supply and sanitary purposes; Retail and wholesale services, including via the internet in relation to Dowels, not of metal, Pipe clamps of plastics, Collars [non-metallic] for fastening pipes, Collars, not of metal, for fastening pipes, Pipe fasteners, connectors and holders, non-metallic, Reeds [plaiting materials], Horn, unworked or semiworked, Plastic ramps for use with vehicles; Retail services, wholesale services, online retail services and online wholesale services in relation to brushmaking materials, unworked or semiworked glass; Retail services, wholesale services, online retail services and online wholesale services in relation to

ropes, nets, tents, awnings, tarpaulins, satis, sacks, padding and stuffing materials, raw fibrous textile materials and tents for caravans; Retail services, wholesale services, online retail services and online wholesale services in relation to high pressure washers, pumps, valves for pumps, compressors, compressed air engines, pumping apparatus [machines]; Retail services, wholesale services, online retail services and online wholesale services in relation to aerials, masts for aerials, aerial converters, aerial amplifiers, antenna boosters, component parts for aerials, masts for wireless aerials; Retail services, wholesale services, online retail services and online wholesale services in relation to apparatus and instruments for the conduction, distribution, change, storage, control and controlling electric current, batteries and accumulators, electric remote controls and control panels. All of the aforementioned services are to be used for camping and outdoor use.

Costs

98. Both parties have achieved an equal measure of success and so I direct that each shall bear its own costs.

Dated this 10th day of December 2025

Judi Pike
For the Registrar

Annex

(i) 3238124



Class 18: Shoulder belts; trunks [luggage]; briefcases; suitcases; beach bags; satchels; hand bags; handbags made of leather; canvas bags; purses; cases of leather or leatherboard; wallets; leather credit card wallets; luggage; bags; key bags; carrying cases for documents; credit-card holders; rucksacks; coin purses; card holders, duffel bags.

Class 25: Ready-made clothing for women, men and children; footwear [excluding orthopedic footwear]; headwear; headbands (clothing); swimming costumes; scarves; beach shoes; belts (clothing); coats; skirts; hats; caps [headwear]; gloves (clothing); rainsuits; socks; beachwear; bonnets; jackets; dresses; blouses; bodies; berets; boots; half-boots; shoes; shirts; tee-shirts; slippers; sneakers; clogs; gabardines; sweaters; parkas; sandals.

Class 35: Advertising; business management; business administration; import-export agencies; assistance in management of business activities; business management of hotels; public relations services; retailing and wholesaling in shops and via global computer networks of shoulder belt, trunks [luggage], briefcases, suitcases, beach bags, satchels, hand bags, handbags made of leather, canvas bags, purses, cases of leather or leatherboard, wallets, leather credit card wallets, luggage, bags, key bags, carrying cases for documents, credit-card holders, rucksacks, coin purses, card holders, duffel bags, ready-made clothing for women, men and children, footwear [excluding orthopedic footwear], headwear, headbands (clothing), swimming costumes, scarves, beach shoes, belts (clothing), coats, skirts, hats, caps [headwear], gloves (clothing), rainsuits, socks, beachwear, bonnets, jackets, dresses, blouses, bodies, berets, boots, half-boots, shoes, shirts, tee-shirts, slippers, sneakers, clogs, gabardines, sweaters, parkas, sandals, magazines and publications, shoe wax, shoe polish, shoe cream, laces for footwear, jewellery, imitation jewellery, timepieces, eyeglasses, eyeglass cases, eyeglass chains,

eyeglass cords, covers for cellular phones, protective covers and cases for tablet computers, cases and covers for laptops.

(ii) 913108352



Class 18: Baggage; Shoulder belts; Walking sticks; Trunks [luggage]; Baggage; Pouches; Wheeled shopping bags; Toiletry bags; Cosmetic bags sold empty; Briefcases [leather goods]; Tool bags of leather, empty; Gym bags; Weekend bags; Key bags; Duffel bags; Carry-on bags; Beach bags; Toiletry bags; Work bags; Holdalls; Shoe bags; Belt bags and hip bags; Satchels; Sling bags for carrying infants; Hand bags; Handbags made of leather; Canvas bags; Travelling handbags; Handbags, purses and wallets; Cases, of leather or leatherboard; Wallets; Leather credit card wallets; Wallets of precious metal; Coverings of skins [furs]; Leather and imitation leather; Luggage, bags, wallets and other carriers; Travelling sets [leatherware]; Tie cases; Key bags; Carrying cases for documents; Credit-card holders; Travel garment covers; Key bags; Trunks [luggage]; Baggage; Rucksacks; Moleskin [imitation of leather]; Coin purses; Umbrellas and parasols; Hides; Animal skins, hides; Briefcases; Card holders; Sling bags for carrying infants; Coin holders; Carriers for suits, shirts and dresses; Leather cloth; Duffel bags; Travelling sets [leatherware]; Hat boxes of leather; Parasols.

Class 25: Ready-made clothing for women, men and children; Footwear [excluding orthopedic footwear]; Headgear; Bibs, not of paper; Headbands (clothing); Bath robes; Swimming costumes; Bathing caps and sandals; Boas (necklets); Underwear; Babies' pants [clothing]; Scarves; Boots for sports and beach shoes; Hoods(clothing); Shawls; Belts (clothing); Money belts (clothing); Ties; Corsets (underclothing); Scarves and headscarves; Fur stoles; Corsets; Skirts; Scarves; Caps [headwear]; Caps [headwear]; Gloves (clothing); Rainsuits; Underwear, mantillas; Stockings; Socks; Neckerchiefs; Babies nappies of textile; Pocket squares; Furs (clothing); Pyjamas; Soles for footwear; Heelpieces for footwear; Veiling (clothing); Garters; Paper clothing; Gymnastic and sports outfits; Layettes [clothing]; Collars (clothing); Maillots, Mittens; Ear muffs (clothing); Soles for footwear; Bowties;

Pants (Am); Beach wraps; Wristbands clothing; Dress shields; Masquerade costumes; Beachwear; Visors (hatmaking); House coats; Garment bags; Sock suspenders; Garters; Petticoats; Tights; Aprons (clothing); And headgear (for wear); Wooden shoes; Bonnets; Garters and garter belts; Jackets; Espadrilles; Non-slipping devices for boots and shoes; Bath robes; Bath slippers; Birettas (headwear); Blouse; Bodies; Berets; Footmuffs, not electrically heated; Lace boots; Boots; Footwear uppers; Studs for football boots (shoes); Booties; Fittings of metal for shoes and boots; Tips for footwear; Welts for boots and shoes; Heelpieces for footwear; Gowns; Pants (Am); Shirts; Yokes (shirts); Shirt fronts; Tee-shirts; Bodices [lingerie]; Waistcoats; Jackets [clothing]; Fishing vests; Heavy jackets; Combinations (clothing); Slips (undergarments); Detachable collars; Collars; Clothing of leather; clothing made of artificial leather; Shower caps; Slippers; Ready-made linings (parts of clothing); Topcoats; Gabardines (clothing); Gymnastic shoes; Jersey clothing; Pullovers; Sweaters; Liveries; Muffs; Footwear uppers; Parkas; Pelerines; Pelisses; Gaiters; Gaiters; Knitwear [clothing]; Knitwear[clothing]; Clothing for gymnastics; Outerclothing; Sandals; Saris; Tunics; Pants (Am); Headgear; Brassieres; Wimples; Togas; Trouser straps; Costumes; Turbans; Slippers; Sports shoes; Footwear for women and men; Casual footwear.

Class 35: Advertising; Business management; Business administration; Office functions; Import-export; Assistance in management of business activities; Business management of hotels; Public relations services; Retailing and wholesaling in shops, via global computer networks, via catalogue, via mail order, via telephone, via radio and television and via other electronic means of sporting articles, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, waxes for leather, preservatives for leather (waxes), shining preparations, shining preparations (polish) for footwear, wax for footwear, polish for footwear, powder for footwear, cream for footwear, bleaching preparations for leather, cleaning and shining preparations for leather and footwear, sprays for footwear, precious metals and their alloys, jewellery, precious stones, jewellery coated with alloys of precious metals, jewellery in alloys of precious metals, horological and chronometric instruments, ornaments of precious metal for footwear, watch straps, cases adapted for holding jewellery and horological instruments, cuff-

links, badges of precious metal, jewellery cases, key rings of precious metal, collectible coins, commemorative medals, tie-pins, dishes for storing jewellery, trophies coated with alloys of precious metals, trophies coated with precious metals, trophies in precious metals, trophies made from alloys of precious metals, magazines and publications, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, compact discs, DVDs and other digital recording media, mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment, computers, computer software, fire-extinguishing apparatus, downloadable electronic publications, electronic publications recorded on computer media, multimedia content, spectacles, spectacle cases, spectacle frames, lenses, cases for contact lenses, contact lenses, spectacle chains, cords for spectacles, covers for mobile telephones, covers for tablets, covers for laptop computers, covers for electronic organisers, covers for telephones (specifically adapted), luggage, shoulder straps, walking sticks, trunks and travelling bags, pocket wallets, bags, wheeled bags, toiletries bags, cosmetics bags sold empty, bags of leather, empty tool bags of leather, sports bags, weekend bags, key bags, canvas bags, hand-held bags, beach bags, toiletries bags, work bags, multi-use bags, bags for footwear, belt and hip bags, book bags, bags for carrying babies, handbags, handbags of leather, handbags of textile, travel bags, handbags, purses and pocket wallets, boxes of leather or leatherboard, notecases, cases of leather for credit cards, notecases of precious metal, coverings of skins (furs), leather and imitations of leather, luggage, handbags, notecases and other carriers, travel cases (leatherware), cases for neckties, cases for keys, cases for carrying documents, holders for credit cards, garment bags for travel, keyrings, trunks and travelling bags, suitcases, backpacks, moleskin (imitation of leather), purses, umbrellas and parasols, furs, animal skins, hides, briefcases, card cases, bags for carrying infants (backpacks), purses, suit carriers, covers for shirts and covers for dresses, clothing of leather, canvas bags, travelling sets (leatherware), hat boxes of leather, parasols, ready-made clothing for women, men and children, footwear (except orthopaedic footwear), headgear, bibs of paper, headbands (clothing), bath robes, swimsuits,

swimming caps and sandals, boas (necklets), underwear, napkin-pants, scarves, footwear for sports and the beach, hoods (for clothing), shawls, belts (clothing), money belts (clothing), neckties, corsets (girdles), scarves, fur stoles, girdles, scarves, fur stoles, girdles, skirts, headscarves, caps, hats, gloves (clothing), waterproof clothing, lingerie, blankets, stockings, socks, neckerchiefs, napkins of textile, handkerchiefs, furs (clothing), pyjamas, soles, heels, veils (clothing), straps, dresses of paper, outfits for gymnastics and sports, layettes, collars (clothing), singlets, mittens, ear muffs (clothing), inner soles, bow ties, trousers, beach wraps, cuffs, dress shields, masquerade costumes, beach clothing, visors (headgear), dressing gowns, pockets for clothing, sock suspenders, garters, coats, esparto shoes or sandals, non-slipping devices for footwear, bath robes, bath slippers, caps (headgear), blouses, bodies (underwear), berets, footmuffs, not electrically heated, stocking suspenders, petticoats, tights (full stockings or woollen tights), aprons (clothing), headgear for wear, wooden shoes, caps (headgear), garters, coats, esparto shoes or sandals, non-slipping devices for footwear, bath robes, bath slippers, caps (headgear), blouses, bodies (underwear), berets, footmuffs, not electrically heated, lace boots, boots, boot uppers, studs for football boots, ankle boots, fittings for footwear, tips for footwear, reinforcing pieces for footwear, heel reinforcements, dresses, pants, shirts, shirt yokes, shirt fronts, T-shirts, camisoles, waistcoats, jackets, fishing jackets, stuff jackets, overalls (clothing), slippers (underwear), detachable collars, collars, clothing of leather, clothing of imitations of leather, shower caps, slippers, skirts, ready-made linings (parts of clothing), overcoats (coats) (clothing), gaiters, leggings, knitted clothing, knitwear, clothing for gymnastics, outerclothing, sandals, saris, tunics, underpants, hats, brassieres, wimples, togas, belt loops, suits, turbans, dresses, slippers, sports shoes, footwear for women and men, casual footwear.

(iii) 902662450

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Class 18: Leather and imitations of leather, and goods made of those materials and not included in other classes; Animal skins, hides; Trunks and travelling bags; Umbrellas, parasols and walking sticks; Whips, harness and saddlery; Attache cases; Backpacks; Bags (Game -) [hunting accessories]; Leather shoulder belts;

Beach bags; Briefbags; Card cases [notecases]; Chain mesh purses, not of precious metal; Collars for animals; Covers for animals; Dog collars; Frames for umbrellas or parasols; Skin (Goldbeaters' -); Sausage casings; Handbag frames; Handbags; Haversacks; Horse blankets; Knee-pads for horses; Music cases; Muzzles; Net bags for shopping; Feed bags; Wallets; Purses; Purses, not of precious metal; Gut for making sausages; Satchels; Shopping bags; Sling bags for carrying infants; Straps for skates; Straps for soldiers' equipment; Suitcase handles; Umbrella covers; Umbrella handles; Umbrella or parasol ribs; Umbrella rings; Umbrella sticks; Vanity cases, not fitted; Walking cane handles; Walking stick seats; Wheeled shopping bags; portfolios; purses; Handbags.

Class 25: Ready-made clothing for women, men and children; Footwear (except orthopaedic footwear), headgear; Nappies of textile; Diapers (babies' -) of textile; Boot uppers; boots (heelpieces for-); Boots (iron fittings for -); Boots (Non-slipping devices for-); Boots (welts for -); Cap peaks; Dress shields; Fittings of metal for boots and shoes; Footwear uppers; Frames (Hat -) [skeletons]; Heelpieces for boots and shoes; Heelpieces for stockings; Heels; Insoles; Linings (Ready-made -) [parts of clothing]; Non-slip devices for shoes; Pockets for clothing; Shirt fronts; Shirt yokes; Shoes (heelpieces for-); fittings of metal for shoes and boots; Non-slipping devices for footwear; Welts for boots; Footwear soles; Studs for football boots [shoes]; Tips for footwear; Visors.

Class 35: Import-export, advertising, commercial businesses, retail and wholesale of leather and imitations of leather, goods made of these materials not included in other classes, animal skins and hides, trunks and travelling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, clothing, footwear, headgear, magazines, printed publications, as well as foodstuffs and beverages of all kinds.