

TRADE MARKS ACT 1994

IN THE MATTER OF

A REQUEST FOR PROTECTION IN THE UK

OF INTERNATIONAL TRADE MARK NO. 1626566

IN THE NAME OF HAGIT MAZLIAH

AND

OPPOSITION THERETO UNDER NO. 431845

BY CLOSET CLOTHING CO. LTD

Background and pleadings

1. International trade mark registration number 1626566 (“the contested mark”) stands in the name of Hagit Mazliah (“the holder”). The contested mark is shown below and has an international registration date and date of designation of 17 June 2021:



My Private Closet

2. Protection in the UK is sought for the following goods and services:

Class 3: Perfumes and eau de Cologne.

Class 14: Precious metals and their alloys; jewellery precious and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.

Class 18: Leather and imitations of leather, and goods made from these materials and not included in other classes; bags, luggage, backpacks, wallets, animal skins.

Class 25: Clothing, footwear, headgear; belts.

Class 43: Hotel services.

3. The request for protection in the UK is opposed by Closet Clothing Co. Ltd (“the opponent”) under ss. 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Under s. 5(2)(b), the opposition is directed against all of the goods in classes 3, 14, 18 and 25. Under both s. 5(3) and s. 5(4)(a), the opposition is directed against all of the goods and services for which registration is sought.

4. The opponent relies upon the following two trade marks for its grounds based on ss. 5(2)(b) and 5(3):

- (i) UK trade mark number 3226667 CLOSET (“the word mark”)

Filed 24 April 2017; registered 14 July 2017. Registered for goods and services in classes 3, 18, 25, 35 and 42 (see the Annexe to this decision).
- (ii) UK trade mark number 3634489 (“the figurative mark”)

Closet.
LONDON

Filed 29 April 2021; registered 17 September 2021. Registered for goods and services in classes 3, 9, 18, 25, 35 and 42 (see Annexe).

5. The s. 5(2)(b) claim is based on all of the goods and services for which the opponent’s marks are registered. The opponent asserts that the goods and services are identical or highly similar and that the competing trade marks are visually, aurally and conceptually highly similar. It also claims that the earlier marks enjoy enhanced distinctive character through the use which has been made of them. As a consequence, it submits that there is a likelihood of confusion.

6. The opponent also claims that its marks have a reputation for clothing and certain clothing-related retail/wholesale services (set out in full at paragraph 90 below) and that the relevant public would believe that the competing marks are used by the same or economically connected undertakings. It also says that the contested mark would gain an unfair advantage by free riding on the earlier marks’ reputations. It further asserts that there would be detriment to the earlier marks’ image and reputation through tarnishing or dilution if the contested mark were used. It asks that the application therefore be refused under s. 5(3).

7. Finally, the opponent asserts that it has a protectable goodwill of which the word “CLOSET” and the figurative sign shown below are distinctive:

Closet.
LONDON

The opponent says that it has used the word sign since 2001 and the figurative sign since 2014 in the UK in relation to clothing and retail of clothing. It asserts that use of the contested mark would deceive the relevant public and that this would result in damage to its goodwill.

8. The holder filed a counterstatement denying all of the claims. I note in particular that the holder submits that the earlier marks lack distinctive character. The holder also put the opponent to specific proof of its claims to enhanced distinctive character and passing off.

9. Both parties filed evidence and the opponent filed submissions alongside its evidence. Neither party requested a hearing; the opponent filed written submissions in lieu. This decision is taken following a careful reading of all of the papers.

10. The opponent is represented by Maguire Boss and the holder by BOC Trade Marks Limited.

Evidence

11. The opponent's evidence is provided by Mohammad Sajjad Baig, who is the Company Director of the opponent. He has held that position since 1996. Mr Baig's evidence goes to the use which has been made of the earlier marks, including press and social media coverage by third parties of the brand.

12. The holder's evidence is provided by Hagit Mazliah. Ms Mazliah's evidence concerns the use which she has made of the contested mark, as well as trade mark registrations held in Israel covering the identical mark in the same classes as the contested mark.

13. Neither witness was cross-examined. I have read all of the evidence and will refer to it, as I consider appropriate, in the course of this decision.

Proof of use

14. The relevant date for the assessment under both s. 5(2)(b) and s. 5(3) is the international registration date, namely 17 June 2021.

15. The registration of the earlier trade marks was not completed five years before the relevant date. The earlier marks are therefore not subject to the use provisions at s. 6A and may be relied upon irrespective of whether they have been put to genuine use.

Section 5(2)(b)

16. The relevant parts of the Act read as follows:

“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.

[...]

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

17. A number of principles have been identified in decisions of the EU courts concerning the global assessment of the likelihood of confusion.¹ The principal authorities are *Sabel BV v Puma AG*, C-251/95, EU:C:1997:528; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, C-39/97, EU:C:1998:442; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*, C-342/97, EU:C:1999:323; *Marca Mode CV v Adidas AG & Adidas Benelux BV*, C-425/98, EU:C:2000:339; *Matratzen Concord GmbH v OHIM*, C-3/03, EU:C:2004:233; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, C-120/04, EU:C:2005:594; *Shaker di L. Laudato & C. Sas v OHIM*, C-334/05P, EU:C:2007:333; and *Bimbo SA v OHIM*, C-591/12P, EU:C:2016:591. These are the principles:

¹ 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.

(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

18. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, the court stated at [23] of its judgment that:

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

19. Complementarity may be the sole basis for the existence of similarity between goods: *Kurt Hesse v OHIM*, C-50/15 P, EU:C:2016:34. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, T-325/06, EU:T:2008:338, the General Court said that “complementary” means:

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

20. It is also well established that goods are considered identical when a wider term covers a narrower subset of goods included in the general class: *Gérard Meric v Office for Harmonisation in the Internal Market*, T-133/05, EU:T:2006:247.

Class 3

Perfumes and eau de Cologne

21. Both of the earlier trade marks' specifications include "perfumery". This is a wide term encompassing the contested mark's "perfumes and eau de Cologne". These goods are identical.

Class 14

Precious metals and their alloys; jewellery precious and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.

22. The earlier marks do not cover goods in class 14 but they do include "retail services [...] connected with jewellery". In *Oakley, Inc v OHIM*, T-116/06, EU:T:2008:399, at [46]-[57], the General Court held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

23. In *Tony Van Gulck v Wasabi Frog Ltd*, BL O/391/14, Geoffrey Hobbs QC, as the Appointed Person, reviewed the law concerning retail services versus goods. He said that:

"9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for

determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

24. However, on the basis of the EU courts’ judgments in *Sanco SA v OHIM*, C-411/13P, EU:C:2014:315 and *Assembled Investments (Proprietary) Ltd v. OHIM*, T-105/05, EU:T:2007:170 at [30] to [35] of the judgment, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*, C-398/07P, EU:C:2009:288, Mr Hobbs concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent’s goods and then to compare the opponent’s goods with the retail services covered by the applicant’s trade mark;

iii) It is not permissible to treat a mark registered for ‘retail services for goods X’ as though the mark was registered for goods X;

iv) The General Court’s findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party’s trade mark was registered (or proposed to be registered).

25. Starting with the contested “jewellery precious and goods in precious metals or coated therewith, not included in other classes; jewellery”, I understand “jewellery precious” to mean jewellery made from precious metals or stones. “Goods in precious metals or coated therewith” includes jewellery. Although different in nature and purpose, the earlier marks’ “retail services [...] connected with jewellery” coincide in users and trade channels with jewellery. The goods and services have a strong complementary relationship, because they depend on one another and will be

perceived as the responsibility of the same undertaking. These goods and services have a medium degree of similarity.

26. The contested mark's "precious stones" are also different in nature and purpose from the earlier marks' retail services connected with jewellery. However, retailers of jewellery often deal in precious stones to be used for individual pieces of jewellery. Consequently, there is an overlap in channels of trade as well as the users of these goods and services. I also consider that there is a complementary relationship between precious stones and retail of jewellery. Although precious stones are not identical to the jewellery subject to the opponent's retail services, jewellery retailers who sell precious stones usually do so under their own name rather than a different brand. The relationship between the goods and services may not be essential but it is, in my view, important. The absence of secondary branding on loose stones is likely to cause the customer to think that the goods and services are the responsibility of the same undertaking. I consider that a fair description of the similarity between these goods and services is that they are similar to a medium degree, albeit the slightly weaker complementary relationship means they are a little lower in the bracket than jewellery itself.

27. The contested "precious metals and their alloys" are raw materials. Consequently, they are not directed at the general public. However, manufacturers of jewellery may both purchase raw materials and use the service of external design services, i.e. the "design of jewellery" services in the specification of the earlier figurative mark. There is therefore an overlap in user. However, the channels of trade will be distinct and the goods and services are not in competition or complementary. I doubt that there is any similarity at all but if there is, it is very low.

28. Turning to the contested "horological and chronometric instruments", I consider that the closest term in the earlier marks' specifications is "retail of [...] jewellery". These goods and services have a different nature and different uses. However, they often reach the end user, who is the same, through the same channels of trade. They are not complementary. These goods and services are similar to a low degree.

29. I would only add that, although the opponent relies upon certain of its goods in class 9 and certain other of its services in classes 35 and 42 against the contested

class 14 goods, I cannot see that any of these goods or services improves its case. The opponent has made no submissions explaining why any of these goods or services should be regarded as similar to the contested goods. I note that the earlier specifications include the sale of goods via “wholesale retail services”. This is an oxymoron, combining two distinct services which are directed at discrete groups of consumer. The responsibility for the clarity of terms in a specification lies with the proprietor: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36 at [365]. The term in question may mean wholesale services or it may mean retail services but it does not clearly mean both. It would be unfair if I were to decide how the term should be construed based on which of the two distinct services offers the opponent a better case: the purpose of specifications is to set out clearly the scope of a registration; it is not for the tribunal to construe an unclear term in the way most favourable to the proprietor of the mark where such a term has found its way into a specification. I find that this term is ambiguous and cannot be used as the basis of the comparison.

Class 18

Leather and imitations of leather, and goods made from these materials and not included in other classes; bags, luggage, backpacks, wallets, animal skins

30. The contested “bags”, “backpacks” and “wallets” are self-evidently identical to the same terms in class 18 of the earlier marks’ specifications.

31. The earlier marks’ specifications also contain “travelling bags”, which are identical on the basis outlined in *Meric* to “luggage” in the contested specification.

32. Both of the earlier marks include “leather and imitation leather bags”, which are identical on the principle in *Meric* to the contested “goods made from [leather and imitations of leather] and not included in other classes”.

33. That leaves the contested “leather and imitations of leather” and “animal skins”. The contested goods are the raw materials from which the bags etc. are manufactured: their purpose is to be fashioned into bags etc. The purpose of the finished bags included in the earlier marks’ class 18 specification is to carry other items. The goods therefore have different uses. One being a finished product and the other being raw material, they are also different in nature. The users of these goods are also different,

because the contested goods are used by manufacturers rather than the general public or retailers/wholesalers of bags. The goods' channels of trade are distinct and there is neither competition nor complementarity, as the base materials would not be taken to have the same commercial origin as the finished goods. These goods are not similar.

34. As regards the design services in the earlier marks' specifications, the consumer of leather, imitations of leather or animal skins on the one hand may coincide with the user of design services, as, for example, a manufacturer of bags might both purchase raw materials for the production of the goods and use the services of an external design agency or freelance designer for the design of the goods. However, the channels of trade will not overlap. As for complementarity, although a designer may design products which are made of leather, imitation leather or animal skin, those materials are not important or essential for the design process itself and the user would not consider the materials and the design service to be the responsibility of the same undertaking. At best, there is a very low degree of similarity. I cannot see any other goods or services which are closer to the contested goods.

Class 25

Clothing, footwear, headgear; belts

35. Both of the earlier specifications include "clothing, footwear, headgear". These goods are self-evidently identical.

36. "Belts" are an item of clothing. They are identical under the principle in *Meric* to "clothing".

37. For reasons which will become apparent, I should add that the contested "clothing, headgear, belts" are also identical to "women's clothing", since these terms encompass or are encompassed by one another. "Footwear" is similar to a medium degree to women's clothing, because although these goods are different in nature, they have an overlap in purpose, share channels of trade and are used by the same consumers. Further, footwear and clothing are often selected as part of an overall aesthetic and are likely to be considered to be produced by the same undertakings. They are thus also complementary.

Average consumer and the purchasing act

38. The average consumer is a legal construct deemed to be reasonably well informed and reasonably circumspect: *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) at [60]. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik*.

39. The opponent submits that the goods are mass market goods of relatively low cost directed at the public at large. It submits that the relevant public will pay a low to average degree of attention. I have no comments from the holder regarding the average consumer.

40. Other than “precious metals and their alloys” in class 14 and “leather and imitations of leather; animal skins” in class 18, discussed at paragraph 41 below, I agree with the opponent that the average consumer of the competing goods and services will include the general public. This group of consumers will take some care in the selection of the goods, paying attention to factors such as scent and style. Although the goods are not specialist, rarely bought or, on the whole, very expensive, neither are they items bought very frequently, on impulse or with little care. Similarly, while retail services are used with some frequency and there is little real jeopardy in the choice, the consumer will wish to assure themselves, for example, that the retailer offers a sufficient range of goods and is competitive on price. A medium degree of attention will be paid to the selection of the majority of these goods and services. For completeness, I recognise that jewellery design services may be used by the general public. Given the propensity of these services to involve considerable outlay and to have sentimental importance, even the general public using these services will pay a fairly high degree of attention. However, the general public is not the common user of the similar goods and services. There is potential for the average consumer of all these goods and services to include professionals but given that professionals generally pay a higher level of attention (certainly not lower) and that it is settled law that the assessment of confusion must be based on the least attentive group of average consumers, I do not need to consider the professional purchaser for these goods.

41. I have found that “precious metals and their alloys” in class 14 and “leather and imitations of leather; animal skins” in class 18 are used by professionals rather than the general public. The materials may be purchased with some frequency by professional users but purchases will normally be of larger quantities and therefore involve greater expenditure. Professional buyers may also be concerned with the reputation or ability of a particular manufacturer to deliver products of the required quantity, to a particular specification or quality and to a particular schedule. Similar considerations apply to jewellery design services, which may be more familiar to professional users but for whom the reputation of the designer or their ability to create pieces of jewellery which, for example, are easy to scale for manufacture at a particular price point, will be factors. These goods and services will therefore be purchased with a fairly high degree of attention by the professional user.

42. All of the consumer goods will be selected by eye from the shelves of retail premises or their online equivalents; some may also be selected from catalogues. Assistance from sales personnel may be required, particularly for items such as jewellery, but this will not replace visual inspection of the goods. Those goods and services used, or relevantly used, by professionals and outlined at paragraph 41 above will also be selected primarily through visual means such as samples, catalogues and websites. Oral recommendations may play a part. Consequently, the purchasing process for all of the goods and services will be predominately visual but may include an aural element.

Distinctive character of the earlier trade marks

43. In *Lloyd Schuhfabrik*, the CJEU said at [22] that the court must make an overall assessment of a mark’s capacity to distinguish the goods or services of one undertaking from those of others. It continued:

“23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section

of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

44. The opponent submits that the word "CLOSET" will be perceived as a piece of furniture with doors on the front and shelves internally which is used for storage. It says that the word is not directly descriptive of the goods for which the earlier marks are registered and that the word mark is distinctive to an average degree, whilst the other elements of the figurative mark make it more distinctive inherently.

45. The holder says that "closet" is not distinctive and should be kept free for other traders, and that it is not an invented word and should be considered a weak trade mark.

46. I do not agree with the opponent that a mark which is not descriptive is necessarily distinctive to a medium degree, nor is the holder right that a mark which is not invented is weakly distinctive. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods or services will have less distinctive character than one that is not; dictionary words will be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are "invented" words which are really just composites of two allusive words and only weakly distinctive as a result, and dictionary words which are more or less common than others.

47. In the present case, "closet" will be understood as a cupboard where clothing or linen is stored, though, for clothing at least, "wardrobe" is the more common word in the UK and "closet" is somewhat old-fashioned. The word therefore indicates a place where goods such as clothing, footwear and handbags may be stored but it is not strongly allusive of the goods themselves. There is no obvious connection in meaning for goods such as perfume. The word mark's inherent distinctive character will therefore range from lower than average for goods where there is a loose connection, such as clothing, to a medium degree of distinctive character where it appears arbitrary, such as perfume. I will return to this point when considering the likelihood of confusion.

48. Although the figurative mark is presented in a specific typeface, its presentation is not particularly remarkable and does not, in my view, add significantly to the distinctive character of the mark. The word “London” will be perceived as descriptive of the place of origin of the goods and services. Overall, this mark is also distinctive to between a lower than average and medium degree, for the same reasons as above.

Enhanced distinctiveness: the evidence

49. The opponent asserts that the factual distinctiveness of its marks has been enhanced through the use which has been made of them. Its evidence in this regard is that the sign “CLOSET” has been used continuously in relation to clothing and both retail and wholesale services relating to clothing since the opponent was incorporated in 1996.² The figurative sign is said to have been used since 2015, also in relation to clothing and both retail and wholesale services relating to clothing.³ Mr Baig says that all of the goods sold by the opponent have borne labels and tags bearing the word and figurative marks since the date of first use.⁴ Undated images show the figurative mark on clothing labels and swing tags.⁵ The variant below is also visible:



50. An order form from around 2015 shows the following mark:⁶



51. Sales in the UK for the goods and services covered by the earlier marks' specifications are said to have been in excess of £17.3 million in total between 1 January 2010 and 1 March 2015.⁷ In the period from 2017 to 2020, sales in the UK

² Baig, §§3-4, exhibits MSB1, MSB2, MSB8.

³ Baig, §5. See also MSB8, p. 169 in which the “new” logo is mentioned.

⁴ Baig, §8.

⁵ MSB3.

⁶ Baig, §16(f) and MSB11.

⁷ Baig, ¶10.

were between £3.6 million and £5.5 million per annum.⁸ Invoices bearing the figurative mark and dated between January 2017 and October 2020 support the sales figures.⁹ They show predominantly dresses but also include goods such as trousers, blouses and jumpsuits, all identified as “Closet” goods. Some are “Closet Curves” items. There are also items such as “Closet Gold Full Skirt Lined Dress” and similarly described goods. “Closet Gold” appears to be a distinct line of goods, because colours are given separately (the Closet Gold Full Skirt Lined Dress is fuchsia). Given the quantities and the invoice amounts, these appear to be sales to other traders.

52. Sales have taken place directly to consumers through a website and via third parties. The evidence regarding the opponent’s website is inconsistent. Mr Baig’s says that the opponent has owned and traded through the website www.closetlondon.com since 2011 but this is not borne out by the exhibit filed in support of this (which concerns a different website, apparently under different ownership), nor by blog articles dated April 2014 and February 2015 about the opponent’s clothes, which contain links to www.closetclothing.co.uk.¹⁰ However, from July 2015 to April 2018 the blog links are to www.closetlondon.com; the prints themselves appear to have been taken from www.closetlondon.com in 2018. There is also archive website evidence from www.closetlondon.com itself from November 2015 to June 2017.¹¹ This shows various items of women’s clothing such as dresses, blouses and jumpsuits being offered for sale, as well as what appear to be links to dresses, outerwear, playsuits/jumpsuits, skirts, trousers and tops by category. The figurative mark is prominent on the prints. The earliest prints have “brands” at the top of the page, but this is not present from December 2016. Mr Baig’s evidence is that prints from after the relevant date are consistent with how the goods/services have been sold and advertised under the marks over the years.¹² A number of reviews from the closetlondon.com website are in evidence.¹³ They are generally positive about matters such as fit, quality and service. However, given that the evidence shows that the

⁸ Baig, §11.

⁹ MSB4. See also MSB11, pp. 211-212.

¹⁰ Baig, §7, MSB2.

¹¹ MSB5.

¹² Baig, §13.

¹³ MSB19.

website serves customers both in the UK and overseas and the reviews are not location-specific, these reviews have limited value.

53. The opponent's goods have also been sold via third-party retailers such as Next, Asos and John Lewis.¹⁴ The website prints are either not dated or have 2022 copyright notices; they appear to have been printed in September 2022 (some, which I ignore entirely, also show prices in dollars and do not appear to relate to the UK). Mr Baig says that the prints are consistent with how the opponent has sold the goods over the years. The figurative mark is shown on some of the web pages but, for the most part, the goods, which are various items of clothing such as dresses and jumpsuits, are all described as "Closet" or "Closet London" products. An article from drapersonline in November 2016 notes that Closet London launched its transactional website in November 2012, which involved direct sales to customers, and that the brand had previously been selling online through Dorothy Perkins from 2010, with online concessions from House of Fraser and John Lewis following.¹⁵ The same article notes that as of November 2016, the brand had no physical shops.

54. Annual advertising spend in relation to goods under the marks was at least £580,000 each year between 2017 and 2020, apart from in 2020 when it was around forty percent lower.¹⁶ Clothing and dresses have been promoted via newsletter to customers in the UK since 2018, all in connection with the figurative mark; some of the newsletters mention that the opponent's dresses have been worn on television shows, including by celebrities.¹⁷ There is no indication of how widely these emails are distributed. There is also blog evidence from the opponent's website dated April 2014 to April 2018 which promotes various items of womenswear by reference to the marks "Closet" or "Closet London".¹⁸ Although some of the images include shoes/sandals, these goods are not mentioned as being goods sold by the opponent, nor are there links provided to its website, as there are for the clothing items; some are specifically noted as footwear by other brands (e.g. Topshop).¹⁹ The opponent has used social media to promote its goods in relation to the name "Closet London" and the figurative

¹⁴ Baig, §15 and MSB6.

¹⁵ MSB13, p. 262.

¹⁶ Baig, §14.

¹⁷ Baig, §16, MSB7. See also MSB14.

¹⁸ MSB8.

¹⁹ P.167.

sign.²⁰ It has had Twitter and Facebook accounts since 2011 and a YouTube presence since 2015; it also appears to have had a Vimeo account since at least January 2019. There are references to it being a “contemporary womenswear” brand. The other social media accounts are not dated.

55. There is also evidence of the opponent’s brand in third-party blogs.²¹ Some of these are dated between 2015 and 2019; it appears from printing dates that they were all available before April 2019. For the most part, the comments relate to individual items of clothing but some bloggers comment on the clothes being London-made, good quality, that they “feel expensive”, that Closet is a “sophisticated, smart, on-trend and a little more high end” and “high quality, fashionable and classic” brand. One, from December 2018, describes Closet London as an online retailer. I also note a reference in 2015 to the “Closet Curve” range for sizes 16-26.

56. “Closet” clothing has featured in magazines with national reach, such as *Closer* and *Hello*, supplements in national newspapers, and in articles in national publications such as *Good Housekeeping* and the *Daily Mail*, between June 2014 and November 2019.²² Several of these articles are about dresses by “Closet London” which have been worn by television presenters.

57. The brand also appears to have been promoted via the Pure London show in 2017 and 2018, which is said to be the UK’s leading trade fashion buying event, showcasing collections in womenswear, shoes, accessories and jewellery with an audience of over 12,000 UK and worldwide retailers.²³

58. The opponent was a finalist in the *Drapers* awards “Young Fashion Brand of the Year” each year between 2013 and 2017; it won the award in 2015.²⁴ *Drapers* is described as a business-to-business magazine and website in the fashion retail sector and the magazine’s previous incarnation (in 2011/2012) as the “fashion industry bible”.²⁵ The *Drapers* brand overview claims that it is a leading source of information

²⁰ MSB8, MSB10.

²¹ MSB9.

²² Baig, §17(a), MSB13, MSB21.

²³ Baig, §16(g), MSB12.

²⁴ Baig, §17(c), MSB15.

²⁵ MSB17, MSB18.

for the UK's fashion business with 645,000 monthly page views and a print readership of over 65,000 in 2019.²⁶

Assessment

59. It is established law that a word mark may be used in any typeface and font.²⁷ The CJEU has also held that the requirements which apply to the verification of genuine use are analogous to those concerning the acquisition by a sign of distinctive character through use for its registration.²⁸ There is no obvious reason why there would be different requirements for the assessment of distinctive character acquired through use in order for an inherently non-distinctive mark to be registered (or remain registered) and the assessment of distinctive character through use for an inherently distinctive mark to enhance its distinctiveness. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach under s. 46(2) to marks which are said to have been used in a form differing in elements which do not alter the distinctive character of the registered form. The same test would appear to apply under s. 6A(4). Mr Johnson said:

“13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a

²⁶ MSB16.

²⁷ See, for example, *La Superquímica v EUIPO*, T-24/17.

²⁸ *Colloseum Holdings AG v Levi Strauss & Co.*, C-12/12, EU:C:2013:253, at [33] and [34].

figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

60. The figurative variations of the word “Closet” in both the figurative mark and as shown at paragraphs 49 and 50, above, are uses of the word mark in a particular typeface and font. They constitute notional fair use of the word mark. As regards the figurative mark, the word “Closet” dominates the mark and is the most distinctive element. The word “London”, as I have already said, is descriptive. Its omission therefore has no impact on the distinctive character of the registered mark. I do not consider that the addition of “CURVES” in some variations materially alters the function of the word “Closet”, which is both visually more prominent and far more distinctive: “CURVES” is likely to be taken as an indication that the garments are plus sized. Nor, in my view, does the absence of the stylised typeface or the use of a

different stylised typeface alter the distinctive character: both the word mark and the figurative mark shown at paragraph 50 above are broadly equivalent to the figurative mark and their use can be taken into account in assessing any enhanced distinctive character of the figurative mark.

61. In the context of what is undoubtedly a huge market, the sales figures are reasonable but not exceptional. They do, however, extend over a number of years. Although the advertising spend is not negligible, there is fairly limited evidence of how the sums were spent. Similarly, although there is some evidence of press coverage and of promotion through blogs, the evidence is not extensive and does not, in my view, indicate very significant market penetration. The sales have been in relation to women's clothing. In sum, I accept that there has been a modest enhancement of the distinctive character of both earlier marks for womenswear but not otherwise. I find that the marks are factually distinctive to a medium degree for women's clothing.



Comparison of marks

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

“[...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their 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.”

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

64. The marks to be compared are:

The earlier marks	The contested mark
<p>(i) CLOSET</p> <p>(ii) </p>	 <p><i>My Private Closet</i></p>

65. The opponent submits that the dominant and distinctive part of all of the competing marks is the word “CLOSET”. It says that the logo in the contested mark is “simply suggestive of a heraldic crest as a decorative figurative element”. It submits that the marks have a high degree of visual, aural and conceptual similarity. It also submits that “closet” plays an independent distinctive and dominant role in all of the marks.

66. The holder says that, when put side by side, the marks do not resemble one another, do not sound alike and do not have the same concept.

67. It is not clear whether the holder’s comments regarding a side-by-side comparison are directed at the comparison between the marks or the global assessment of the likelihood of confusion. As regards the comparison of the marks, the case law is clear that I must compare the overall impressions of the trade marks, from the perspective of the average consumer. Although I will need to consider the various elements of each mark and decide their weight in the overall impression, I must not adopt an overly granular approach when comparing their overall levels of similarity. When it comes to assessing the likelihood of confusion, which I will do later in this decision, it is wrong to suggest that the comparison is between the marks side by side. As the case law I set out at paragraph 17 explains, the average consumer 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.

The overall impressions

68. The overall impression of the earlier word mark is contained in the single word “CLOSET”.

69. The earlier figurative mark consists of the word “Closet”, presented in a particular typeface, with the word “LONDON” in much smaller lettering and placed below the word “Closet”. The word “Closet” plays the greatest role in the overall impression. The stylisation of that word plays a weaker role and the word “LONDON”, being both in very small font compared with “Closet” and a descriptive indicator of geographical origin, has little or no weight.

70. The contested mark has a number of elements. There is a reasonably intricate ornamental motif with scroll shapes. In the centre horizontally, and not quite in the centre vertically, the letter “H” is superimposed on the device. Below the device are the words “My Private Closet” in a fairly unremarkable italic serif script. Whilst it is often the case that word elements of a mark have more impact in the overall impression, in this case the device is a significant part of the mark, being quite large relative to the words and placed immediately above them. In my view, the device as a whole and the words “My Private Closet” play a roughly equal role in the overall impression. The words “My Private Closet” will be read as a unit in which “My Private” qualifies “Closet”. Consequently, I reject the opponent’s contention that “Closet” is either independently distinctive or dominant in the contested mark.

Comparison with the word mark

71. Beginning with the word mark, the single word “CLOSET” and the contested mark differ visually because of the significant device element in the contested mark, along with the additional words “My Private”. The difference between upper case and title case is not a relevant difference, because the word mark may be used in title case. The similarity between the marks arises from the shared word “closet”, which is the only word in the earlier mark and the final word in the contested mark. There is a fairly low degree of visual similarity.

72. As regards the aural comparison, I think it unlikely that the letter “H” will be articulated: it is likely to be lost in the device as a whole and, even if it is noticed, I

doubt it will be spoken. The device will not be verbalised. Therefore, both marks contain the same word “closet”, meaning that two of the five syllables in the later mark are identical to the earlier mark. There is a medium degree of aural similarity.

73. From a conceptual perspective, the word “closet” means a cupboard, which is how the earlier mark would be understood. The same meaning is conveyed by the word “closet” in the contested mark, though this meaning is qualified by the addition of “my private”, suggesting a “closet” which is personal or for nobody else’s use. To the extent that the letter “H” is noticed, it will simply be taken as a letter of the alphabet and will convey no concrete concept. There is a medium degree of conceptual similarity.

Comparison with the (earlier) figurative mark

74. Turning to the comparison with the figurative mark, there are again visual differences because of the device and words “My Private” in the contested mark, which have no counterparts in the earlier mark. There is an additional difference because of the stylisation of the word “Closet” in the earlier figurative mark. For the reasons I have given, “LONDON” is likely to be ignored. Overall, there is a low degree of visual similarity.

75. In terms of the aural comparison, “LONDON” is not likely to be articulated given its entirely descriptive nature. For the same reasons given above, the contested mark is likely to be verbalised as “My Private Closet” and there is a medium degree of aural similarity.

76. Conceptually, the same considerations apply as above. To the extent that “LONDON” introduces a conceptual difference, it is a non-distinctive difference. There is a medium degree of distinctive conceptual similarity overall.

Likelihood of confusion

77. Confusion may be direct or indirect. The two types of confusion were explained by Mr Iain Purvis QC, as the Appointed Person, in *LA Sugar Limited v Back Beat Inc.*, BL O/375/10 as follows:

“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).”

78. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ pointed out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

79. The opponent submits that there is a likelihood of direct confusion between the competing trade marks. I reject that submission for both of the earlier marks. The device element in the contested mark and the additional words “My Private” are important elements of that mark which will not be forgotten and, even if they are misremembered, the average consumer will not think that the competing marks are one and the same.

80. The opponent also relies upon indirect confusion. In this regard it submits that the contested mark will be perceived as a reference to limited edition goods from the opponent’s brand, or a collection relating to intimate (private) items of clothing. It also says that the evidence shows that the opponent has used brand variants.

81. It is true that there is some evidence of the opponent using brand variants. However, this has been in the form of descriptive or laudatory words, such as “CURVES” and “GOLD”, with its “Closet” marks. The structure of these sub-brands, which add a non-distinctive element after the main brand, is very different from the contested mark. I do not, therefore, think that the evidence of other brands used by the opponent assists its case.

82. I will begin with the earlier word mark. I accept the opponent’s submission that, where clothing is concerned, the contested mark may be perceived as a brand variant referring to intimate items of clothing. That is a plausible brand extension. I have had to give the opponent’s submission that the contested mark will be perceived as offering another line from the opponent’s brand, such as a limited edition range, more careful consideration. I have come to the view that, where there is at least a medium degree of similarity between the goods, or the goods and services, there is a likelihood of indirect confusion. It seems to me that the average consumer encountering the contested mark would perceive it as a brand variant or sub-brand offering an exclusive or limited edition range, including that the goods are more luxurious and/or expensive and a special treat for the consumer, in the sense of being “just for me”. For most of the goods in this category, the goods and services of the earlier mark are distinctive to a medium degree. However, on balance, I think that the same reasoning also applies to those goods for which the mark is inherently distinctive to a lower than average degree, namely “goods made from leather and imitations of leather and not included in other classes, bags and backpacks”, because these goods include or are

types of handbags, and “footwear”. The distinctive character of the earlier mark is slightly weaker but not sufficiently to undermine the conceptual connection between the marks, despite their limited visual similarity.

83. The remaining goods are “precious metals and their alloys” and “horological and chronometric instruments” in class 14, and “leather and imitations of leather; animal skins” in class 18. These goods have a low or very low degree of similarity with the earlier mark’s goods/services. I do not consider that there is a likelihood of confusion in respect of these goods. The similarity between the competing goods and/or services is too low, even for those goods which are bought with only a medium level of attention, and the marks are not sufficiently similar, for there to be a likelihood of confusion. Further, for “precious metals and their alloys” and “leather and imitations of leather”, the average consumer is a professional provider who pays an elevated level of attention and who is very unlikely to be deceived as to the commercial origin of the goods given the differences between the marks. The opposition is rejected under s. 5(2)(b) for all of these goods.

84. As regards the earlier figurative mark, my view is that the opposition succeeds and fails to the same extent as for the word mark. Although the marks are visually rather less similar, the aural and conceptual similarities are such that the consumer will connect the marks and believe that the contested mark is a brand variant of the earlier mark, or vice versa, for the same reasons as with the word mark.

Conclusion under s. 5(2)(b)

85. The opposition based upon s. 5(2)(b) succeeds in part. The application is refused for the following goods:

Class 3: Perfumes and eau de Cologne.

Class 14: Jewellery precious and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones.

Class 18: Goods made from leather and imitations of leather and not included in other classes; bags, luggage, backpacks, wallets.

Class 25: Clothing, footwear, headgear; belts.

Section 5(3)

86. The relevant section of the Act reads:

“5.—(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.”

87. S. 5(3A) states:

“(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.”

88. The relevant case law can be found in the following judgments of the CJEU: *General Motors Corporation v Yplon SA*, C-375/97, EU:C:1999:408, [1999] ETMR 950; *Intel Corporation, Inc. v CPM United Kingdom Limited*, 252/07, EU:C:2008:655, [2009] ETMR 13; *Adidas-Salomon AG and Adidas Benelux BV v Fitnessworld Trading Ltd.*, C-408/01, EU:C:2003:582, [2004] ETMR 10; and *L’Oréal & Ors v Bellure & Anor*, C-487/07, EU:C:2009:378, [2009] ETMR 55; *Interflora & Anor v Marks & Spencer & Anor*, C-323/09, EU:C:2011:604; and *Environmental Manufacturing LLP v OHIM*, C-383/12P, EU:C:2013:741. 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'Oréal 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'Oréal 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'Oréal 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'Oréal v Bellure*).

Reputation

89. In *General Motors*, the CJEU gave the following guidance for the assessment of a trade mark's reputation:

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

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

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market

share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

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

90. The opponent asserts a reputation in relation to the following goods and services:

The CLOSET word mark:

Class 25: Clothing

Class 35: The bringing together, for the benefit of others, of a variety of goods, namely, clothing, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, by wholesale retail services, by means of telecommunications or through an internet website; the bringing together, for the benefit of others, of a variety of goods, namely, clothing; retail services, mail order retail services, wholesale retail services, and online retail services connected with clothing.

The figurative mark:

Class 25: Clothing

Class 35: The bringing together, for the benefit of others, of clothing, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website; retail services, mail order retail services, wholesale retail services, and online retail services connected with clothing, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion

boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website; retail services provided via retail stores, department stores, retail clothing stores, fashion boutiques and pop-up shops connected with clothing, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website.

91. For the reasons given at paragraphs 59 to 61, above, I am satisfied that both earlier marks had at the relevant date a qualifying reputation in relation to women's clothing.

92. In relation to the services which are relied upon in class 35, I accept that the evidence shows that the opponent has operated a website through which it has sold its products to the public. As the case law I quoted earlier explains, merely offering one's own goods for sale does not constitute a retail service. There is very little evidence in support of a reputation for retail services. The opponent has never, it appears, had any physical stores. There is a suggestion that the opponent's website sold brands other than Closet but there is no further detail and this appears to have stopped in any event by December 2016. In terms of the website itself, there is no evidence of the number of sales made through the website, as distinct from goods sold via third-party retail outlets/websites; the invoice evidence shows sales to the trade, not retail. For the reasons I have already given, "wholesale retail services" is an unclear term but even if it were not, the evidence is inadequate to establish a reputation in wholesale services relating to clothing. The reviews from the opponent's website are not, as I have indicated, clearly from customers in the UK and the remaining evidence concerning the online service is limited. The evidence is insufficient to establish a reputation in relation to any of the services relied upon.

Link

93. Whether the relevant public will make the required mental 'link' between the marks must take account of all relevant factors. The factors are identified in *Intel* and set out below. I have considered some of these points already and adopt my earlier reasons

and findings. For convenience, my earlier findings are set out where appropriate below.

The degree of similarity between the conflicting marks

94. The word mark is visually similar to the contested mark to a fairly low degree, aurally similar to a medium degree and conceptually similar to a medium degree.

95. The figurative mark is visually similar to the contested mark to a low degree, aurally similar to a medium degree and conceptually similar to a medium degree.

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

96. Under this ground, the comparison is between “women’s clothing” and the goods and services of the contested mark’s specification.

Classes 3 and 14

97. There is no similarity between clothing and the contested goods in classes 3 or 14. They differ in all material respects, other than users. However, this is a superficial similarity. Nevertheless, I accept that the goods, particularly the contested perfume/eau de Cologne, jewellery and watches, are not poles apart from clothing in the way that, say, cotton wool is different from agricultural machinery.

Class 18

98. The contested “goods made from [leather and imitations of leather] and not included in other classes”, “bags”, “backpacks” and “wallets” are similar to a medium degree to women’s clothing. These goods overlap in users and are often found for sale in the same shops. The fact that they often also contribute to an overall aesthetic is likely to cause the consumer to think that they are the responsibility of the same undertaking. They are therefore complementary goods.

99. “Luggage” cannot be said to be chosen for its ability to coordinate with women’s clothing. Further, it is not typically found for sale in the same shops; if larger stores

stock both, they will be in discrete sections. There are no other points of similarity other than users, which is at too high a level of generality to result in overall similarity between these goods. They are not similar.

100. There is no similarity between “leather and imitations of leather; animal skins” on the one hand and women’s clothing on the other. The goods are different in every material respect, other than a potential overlap in professional buyers at a superficial level. This is not enough to result in similarity.

Class 25

101. The contested mark’s “clothing”, “headgear” and “belts” are identical to the earlier marks’ “women’s clothing”, whilst the contested “footwear” is similar to a medium degree to women’s clothing, for the reasons I have already given.

Class 43

102. There is no similarity between hotel services and women’s clothing. The overlap in users is at a very high level of generality and is insufficient for similarity to bite. The goods and services are different in every other material respect.

Average consumer and purchasing process

103. As I found above, for the most part the average consumer is a member of the general public who will pay a medium degree of attention. Hotel services will also be purchased by the general public, for whom the purchase is likely to be less frequent and who will pay attention to factors such as the hotel’s facilities and location. These services are likely to be selected with an above average level of attention. Professional or business users are also relevant and may use hotel services; their level of attention will be above average. The selection process will be predominantly visual for all of the goods and services, though there may be an aural aspect to the purchase.

The strength of the earlier mark’s reputation

104. The earlier marks had a modest reputation for women’s clothing at the relevant date.

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

105. At the relevant date the earlier mark was factually distinctive to medium degree for women's clothing.

Whether there is a likelihood of confusion

106. There is a likelihood of confusion for the goods in class 25, for the reasons given at paragraphs 82 and 84 above. I also consider that there is a likelihood of confusion in respect of "goods made from [leather and imitations of leather] and not included in other classes; bags, backpacks, wallets" in class 18, for essentially the same reasons. The goods are sufficiently close and the marks sufficiently similar overall, particularly conceptually that, despite the low or fairly low visual similarity, the average consumer is likely to think that the respective goods have the same or a connected commercial origin.

107. I do not consider that there would be a likelihood of confusion for any of the remaining goods. In relation to "leather and imitations of leather; animal skins" and "hotel services", the goods and services concern entirely different market sectors and there is no reason at all why, that being the case, either relevant public would believe that a provider of women's clothing was providing the contested goods and services.

108. As regards the other dissimilar goods, the competing goods are in different market sectors, albeit there is not a huge distance between the clothing market and the jewellery/watch and perfume sectors. It is, however, unlikely that an average consumer would believe that the opponent, as a provider of women's clothing with only a modest reputation, is using the contested mark for the dissimilar goods.

Conclusion on link

109. Taking all of the above into account, I find that the relevant public would have made a link between the respective marks for the identical and similar goods in classes 18 and 25 at the relevant date.

110. I do not consider that the earlier marks' reputation was sufficiently strong at the relevant date for the link to be made in relation to any of the remaining goods. Whilst some clothing brands, particularly high-end or very successful ones, may produce goods such as perfume, jewellery and watches, it is not usually the case. The earlier marks' reputation in this case is not extensive enough to bridge the gap and bring the earlier marks to mind. Absent a link, there can be no unfair advantage and no detriment. The opposition based on s. 5(3) therefore fails for the dissimilar goods and services.

Unfair advantage

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

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

112. I have found that, for the goods for which there is a link, there is a likelihood of confusion. That constitutes an unfair advantage: the consumer is confused into believing that the goods are sold by the owner of the earlier marks or a connected undertaking and the contested mark benefits from sales it would not otherwise have made. I also find that the confusion as to origin would confer an unfair advantage because the contested mark would benefit from the marketing efforts and financial

investment of the opponent in establishing and maintaining its reputation. This ground is made out in relation to the following goods but not otherwise:

Class 18: Goods made from leather and imitations of leather and not included in other classes; bags, backpacks, wallets.

Class 25: Clothing, footwear, headgear; belts.

113. In view of my above findings, there is no need for me to consider the alternative assertions of damage under the s. 5(3) ground.

Passing off: s. 5(4)(a)

114. The relevant legislation is as follows:

“5.—(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,

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.

(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.”

115. The relevant date for assessing the passing off claim is the international registration date but if the holder has used the mark before that date such use must be taken into account.²⁹ In the present case, although the holder has claimed to have used the contested mark for some fifteen years, there is no evidence that this was in the UK, which is the relevant territory. The only evidence of goods on sale under the

²⁹ *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11 at [43].

contested mark is via a website which appears to have an Israeli top-level domain address and which Ms Mazliah says she has owned since 2022 (i.e., after the relevant date).³⁰ Social media evidence does not paint a clear picture of UK use, whilst Israeli trade mark registrations tend to suggest that the business was in Israel. Consequently, the relevant date for the assessment is 17 June 2021.

Goodwill

116. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341 HL, Lord Oliver of Aylmerton described at [406] the “classical trinity” that must be proved in order to reach a finding of passing off:

“First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”

117. For the reasons I have given at paragraphs 59 to 61, above, I am satisfied that at the relevant date the opponent had a protectable goodwill regarding its business in women’s clothing of which both of its signs were distinctive. The goodwill was reasonable.

³⁰ See Ms Mazliah’s statement and exhibits MPC1-MPC4.

Misrepresentation

118. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

119. The requirement for a “substantial number” of members of the public to be deceived means a substantial number of the claimant's actual or potential customers would be likely to be deceived: *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590.

120. I recognise that the tests for a likelihood of confusion and misrepresentation are different. However, as recognised by Lewison LJ in *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501, it is doubtful whether the difference between the legal tests will produce different outcomes. I do not consider that the outcome would be different in this case. There would be a misrepresentation in relation to “goods made from [leather and imitations of leather] and not included in other classes”, “bags”, “backpacks” and “wallets” in class 18 and for all of the goods in class 25, for the reasons given at paragraphs 82, 84 and 106, above, namely because the goods are in the same or closely connected fields of activity and the marks and signs have sufficient similarities, as detailed above, to mislead the relevant public. However, the remaining goods and services are in discrete areas of business, some very far removed from the opponent's activities, which precludes the risk of misrepresentation.

Damage

121. In *Harrods Limited V Harrodian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases as follows:

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff's business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff's goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff's reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant's plastic irrigation equipment might be dissuaded from buying one of the plaintiff's plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation.”

122. The opponent has not identified a specific type of damage. Damage through loss of sales, where the relevant public is misled as to the origin of the goods, and loss of control of the signs' reputation are both reasonably foreseeable. Damage is made out.

Conclusion under s. 5(4)(a)

123. The opposition partially succeeds under this ground for the following goods:

Class 18: Goods made from leather and imitations of leather and not included in other classes; bags, backpacks, wallets.

Class 25: Clothing, footwear, headgear; belts.

Overall conclusion

124. The opposition has succeeded in part. The contested mark is refused for the goods set out below:

Class 3: Perfumes and eau de Cologne.

Class 14: Jewellery precious and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones.

Class 18: Goods made from leather and imitations of leather and not included in other classes; bags, luggage, backpacks, wallets.

Class 25: Clothing, footwear, headgear; belts.

125. The application will proceed to registration for the remaining goods and services.

Costs

126. The degree of success enjoyed by the parties is close to equal but the opponent has been marginally more successful. In the circumstances, I consider that an award of £200 towards the opponent's costs, which is the official fee for bringing the opposition, is appropriate.

127. I therefore order Hagit Mazliah to pay Closet Clothing Co. Ltd the sum of £200. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 14th day of April 2025

Heather Harrison

For the Registrar

ANNEXE

The earlier marks' specifications

UK3226667

- Class 3: Cosmetics, perfumery, essential oils, hair lotions; soaps; make-up; make-up remover; fragrances; toiletries and body care preparations; body cleaning and beauty care preparations; hair preparations and treatments; dentifrices; nail care preparations; skin care preparations; anti-perspirants; sunscreen cream; after-sun creams; tanning creams.
- Class 18: Bags; hand bags; shoulder bags; trunks and travelling bags; purses; wallets; tote bags, canvas shopping bags, leather and imitation leather bags, backpacks, book bags, sports bags, bum bags, wallets, purses, cosmetic bags sold empty, make-up bags sold empty, evening bags, weekend bags, athletics bags, travelling bags, clutch bags, beach bags.
- Class 25: Clothing, footwear, headgear.
- Class 35: The bringing together, for the benefit of others, of a variety of goods, namely, cosmetics, perfumery, essential oils, hair lotions, soaps, make-up, make-up remover, fragrances, toiletries and body care preparations, body cleaning preparations and beauty care preparations, hair preparations and hair treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, clothing, footwear, headgear, clothing accessories, belts, bags, tote bags, hand bags, shoulder bags, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, by wholesale retail services, by means of telecommunications or through an internet website; the bringing together, for the benefit of others, of a variety of goods, namely, cosmetics, perfumery, essential oils, hair lotions, soaps, make-up,

make-up remover, fragrances, toiletries and body care preparations, body cleaning preparations and beauty care preparations, hair preparations and hair treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, clothing, footwear, headgear, clothing accessories, belts, bags, tote bags, hand bags, shoulder bags, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches; retail services, mail order retail services, wholesale retail services, and online retail services connected with cosmetics, perfumery, essential oils, hair lotions, soaps, make-up, make-up remover, fragrances, toiletries and body care preparations, body cleaning preparations and beauty care preparations, hair preparations and hair treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, clothing, footwear, headgear, clothing accessories, belts, bags, tote bags, hand bags, shoulder bags, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches.

Class 42: Fashion design; design of clothing, footwear and headgear; design of bags.

UKTM 3634489

Class 3: Cosmetics, perfumery, essential oils, hair lotions; lipstick; lipstick cases; sun blocking lipsticks [cosmetics]; lip balm [non-medicated]; lip cosmetics; nail cosmetics; nail paint [cosmetics]; nail varnish; nail varnish remover; soaps; make-up; make-up remover; fragrances; toiletries and body care preparations; body cleaning and beauty care preparations; hair preparations and treatments; dentifrices; nail care preparations; skin care preparations; anti-perspirants; sunscreen cream; after-sun creams; tanning creams.

Class 9: Sunglasses; boxes [cases] for sunglasses; cases for spectacles and sunglasses; chains for spectacles and sunglasses; clip-on sunglasses;

cords for sunglasses; covers for sunglasses; fashion sunglasses; frames for spectacles and sunglasses.

Class 18: Bags; hand bags; shoulder bags; trunks and travelling bags; tote bags; leather and imitation leather bags; backpacks, book bags, sports bags, bum bags; evening bags, weekend bags, athletics bags, travelling bags, clutch bags, beach bags; purses; wallets; credit-card holders; canvas shopping bags; garment carriers; labels for luggage; umbrellas; belts; cosmetic bags sold empty, make-up bags sold empty; make-up cases; make-up bags; beauty cases.

Class 25: Clothing, footwear, headgear; face masks.

Class 35: The bringing together, for the benefit of others, of clothing, footwear, headgear, clothing accessories, cosmetics, perfumery, essential oils, hair lotions, lipstick, lipstick cases, sun blocking lipsticks [cosmetics], lip balm [non-medicated], lip cosmetics, nail cosmetics, nail paint [cosmetics], nail varnish, nail varnish remover, soaps, make-up, make-up remover, fragrances, toiletries and body care preparations, body cleaning and beauty care preparations, hair preparations and treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, sunglasses, boxes [cases] for sunglasses, cases for spectacles and sunglasses, chains for spectacles and sunglasses, clip-on sunglasses, cords for sunglasses, covers for sunglasses, fashion sunglasses, frames for spectacles and sunglasses, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches, lip brushes, applicators for cosmetics, containers for cosmetics, holders for cosmetics, make-up brushes, bags, hand bags, shoulder bags, trunks and travelling bags, tote bags, leather and imitation leather bags, backpacks, book bags, sports bags, bum bags, evening bags, weekend bags, athletics bags, travelling bags, clutch bags, beach bags, purses, wallets, credit-card holders, canvas shopping bags, garment carriers, labels for luggage, umbrellas, belts, cosmetic bags sold empty, make-up bags sold empty, make-up cases, make-up bags, beauty cases, enabling customers to conveniently view

and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website; retail services, mail order retail services, wholesale retail services, and online retail services connected with clothing, footwear, headgear, clothing accessories, cosmetics, perfumery, essential oils, hair lotions, lipstick, lipstick cases, sun blocking lipsticks [cosmetics], lip balm [non-medicated], lip cosmetics, nail cosmetics, nail paint [cosmetics], nail varnish, nail varnish remover, soaps, make-up, make-up remover, fragrances, toiletries and body care preparations, body cleaning and beauty care preparations, hair preparations and treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, sunglasses, boxes [cases] for sunglasses, cases for spectacles and sunglasses, chains for spectacles and sunglasses, clip-on sunglasses, cords for sunglasses, covers for sunglasses, fashion sunglasses, frames for spectacles and sunglasses, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches, lip brushes, applicators for cosmetics, containers for cosmetics, holders for cosmetics, make-up brushes, bags, hand bags, shoulder bags, trunks and travelling bags, tote bags, leather and imitation leather bags, backpacks, book bags, sports bags, bum bags, evening bags, weekend bags, athletics bags, travelling bags, clutch bags, beach bags, purses, wallets, credit-card holders, canvas shopping bags, garment carriers, labels for luggage, umbrellas, belts, cosmetic bags sold empty, make-up bags sold empty, make-up cases, make-up bags, beauty cases, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website; retail services provided via retail stores, department stores, retail clothing stores, fashion boutiques and pop-up shops connected with clothing, footwear, headgear, clothing accessories, cosmetics, perfumery, essential oils, hair lotions, lipstick, lipstick cases, sun blocking lipsticks

[cosmetics], lip balm [non-medicated], lip cosmetics, nail cosmetics, nail paint [cosmetics], nail varnish, nail varnish remover, soaps, make-up, make-up remover, fragrances, toiletries and body care preparations, body cleaning and beauty care preparations, hair preparations and treatments, dentifrices, nail care preparations, skin care preparations, anti-perspirants, sunscreen cream, after-sun creams, tanning creams, sunglasses, boxes [cases] for sunglasses, cases for spectacles and sunglasses, chains for spectacles and sunglasses, clip-on sunglasses, cords for sunglasses, covers for sunglasses, fashion sunglasses, frames for spectacles and sunglasses, jewellery, costume jewellery, necklaces, bracelets, earrings and brooches, lip brushes, applicators for cosmetics, containers for cosmetics, holders for cosmetics, make-up brushes, bags, hand bags, shoulder bags, trunks and travelling bags, tote bags, leather and imitation leather bags, backpacks, book bags, sports bags, bum bags, evening bags, weekend bags, athletics bags, travelling bags, clutch bags, beach bags, purses, wallets, credit-card holders, canvas shopping bags, garment carriers, labels for luggage, umbrellas, belts, cosmetic bags sold empty, make-up bags sold empty, make-up cases, make-up bags, beauty cases, enabling customers to conveniently view and purchase those goods in retail stores, department stores, retail clothing stores, fashion boutiques, pop-up shops, by mail order retail services, wholesale retail services, by means of telecommunications or through an internet website; loyalty scheme services.

Class 42: Fashion design; design of sunglasses; design of clothing, footwear and headgear; design of fashion accessories; design of jewellery; design of cosmetic products; design of bags, boxes and cases.