

O-037-17

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO 3115125

BY FITNESS DIRECT LTD

TO REGISTER



AND



AS A SERIES OF TWO MARKS IN CLASS 28

AND

OPPOSITION THERETO (UNDER NO. 405366)

BY

SPORTSDIRECT.COM RETAIL LIMITED

BACKGROUND

1) On 26 June 2015, Fitness Direct Ltd ('the applicant') applied to register the two marks shown on the cover page of this decision, as a series, in respect of the following goods:

Class 28: Back supports [belts] for weightlifters; Belts for weightlifting; Belts (Weight lifting -) [sports articles]; Benches for sporting use; Bicycles (Stationary exercise -); Body toner apparatus [exercise]; Body training apparatus [exercise]; Body-building apparatus; Body-building apparatus [exercise]; Body-training apparatus; Cycling machines [stationary]; Dumb-bell shafts [for weight lifting]; Dumb-bells; Dumb-bells [for weight lifting]; Elbow guards [sports articles]; Exercise bicycles (Stationary -); Exercise trampolines; Exercise treadmills; Exercise weights; Exercisers [expanders]; Floats for bathing and swimming; Flotation apparatus for swimming; Gymnastic and sporting articles not included in other classes; Indoor fitness apparatus; Kick board flotation devices for recreational use; Kick boards; Kickboard flotation devices for recreational use; Knee guards for athletic use; Knee guards [sports articles]; Knee pads for athletic use; Physical exercises (Machines for -); Shin guards for athletic use; Shin guards [sports articles]; Shin pads for athletic use; Shin pads for use in sports; Shin pads [sports articles]; Shin protectors [sports articles]; Shock absorption pads for protection against injury [sporting articles]; Skipping ropes; Sports training apparatus; Weight lifting belts [sports articles]; Weight lifting benches; Wrist and ankle weights for exercise; Wrist guards for athletic use; Yoga blocks; Yoga straps.

2) The application was published in the Trade Marks Journal on 31 July 2015 for opposition purposes and notice of opposition was later filed by Sportsdirect.com Retail Limited ('the opponent'). The opponent claims that the trade mark application offends under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ('the Act').

3) In support of its grounds under section 5(2)(b) of the Act, the opponent relies upon the trade marks shown below for a wide variety of goods and services in a number of classes. For reasons which will become apparent it is sufficient to set out here only the goods and services relied upon in classes 28, 35 and 41, the most relevant of which are also emboldened. A full list of the goods and services relied upon can be found at Annex 1 to this decision:

Trade Mark details	Goods and services
<p>UK TM Registration No: 2597152B</p> <p>SPORTSDIRECT</p> <p>SPORTS DIRECT</p> <p>(Series of 2)</p> <p>Filing date: 04 October 2011</p> <p>Date of entry in register: 03 August 2012</p>	<p>Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; apparatus for boxing; apparatus for skiing; body-building apparatus sporting articles for use in racquet games; string materials for sporting racquets; exercise equipment, other than for medical rehabilitative purposes; fitness exercise machines; decorations for Christmas trees; play tents; sports bags shaped to contain specific apparatus used in athletics [other than clothing or footwear]; balls; bats; baseball masks; body protectors; breast protectors; stomach protectors [adapted for use in a specific sport]; knee protectors adapted for use whilst playing sports; leg guards adapted for playing sport; shin pads [sports articles]; elbow guards (sport articles); hip-guards specially made for playing sports [parts of sports suits]; shin guards for athletic use; wrist guards for athletic use; fist guards [sporting articles]; hand protectors adapted for sporting use; gloves for sporting purposes [specifically adapted for]; apparatus for use in</p>

the game of football; football gloves; sporting articles for use in playing football [other than clothing or articles for protective purposes]: football or soccer goals; training apparatus for use in relation to football; goal nets; soccer ball goal nets; goal posts; whistles; parts and fittings for all of the foregoing; cards (Playing-).

Class 35: Retail clothing shop services; **the bringing together, for the benefit of others, of a variety of** footwear, headgear, MP3 players, personal stereos; headphones; audio speakers cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecommunication apparatus (including international prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered cards bearing printed matter, odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars, printed agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made of leather

	<p>and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors; cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations; children's seats for use in cars; sporting articles and parts and fittings for all of the aforesaid goods; shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos, magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear,</p>
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	<p>discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction</p>
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	<p>programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], enabling customers to conveniently view and purchase those goods; all the aforesaid excluding retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p>
<p>UK TM Registration No: 2598201</p> <p>SPORTSDIRECT.COM</p> <p>SPORTS DIRECT.COM</p> <p>(Series of 2) Filing date: 17 October 2011 Date of entry in register: 13 July 2012</p>	<p>Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; apparatus for boxing; apparatus for skiing; body-building apparatus; sporting articles for use in racquet games; string materials for sporting racquets; exercise equipment, other than for medical rehabilitative purposes; fitness exercise machines; decorations for Christmas trees; play tents; sports bags shaped to contain specific apparatus used in athletics [other than clothing or footwear]; balls; bats; baseball masks; body protectors; breast protectors; stomach protectors [adapted for use in a specific sport]; knee protectors adapted for use whilst playing sports; leg guards adapted for playing sport; shin pads [sports articles]; elbow guards (sport articles); hip-guards specially made for playing sports [parts of sports suits]; shin guards for athletic</p>

use; wrist guards for athletic use; fist guards [sporting articles]; hand protectors adapted for sporting use; gloves for sporting purposes [specifically adapted for]; apparatus for use in the game of football; football gloves; sporting articles for use in playing football [other than clothing or articles for protective purposes]; football or soccer goals; training apparatus for use in relation to football; goal nets; soccer ball goal nets; goal posts; whistles; parts and fittings for all of the foregoing; cards (Playing-)

Class 35: Retail clothing shop services; **the bringing together, for the benefit of others, of a variety of** footwear, headgear, MP3 players, personal stereos, headphones, audio speakers cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecom apparatus (including International prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered cards bearing printed matter, odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars,

	<p>agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made leather and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors, cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations, children's seats for use in cars, sporting articles and parts and fittings for all of the aforesaid goods, shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos,</p>
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	<p>magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear, discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle</p>
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	<p>relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], enabling customers to conveniently view and purchase those goods; all the aforesaid excluding retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p>
<p>European Union Trade Mark Application No: 13519194</p>  <p>Colours Claimed/Indication: Blue "(Pantone Reflex C)", red "(Pantone 485 C)", yellow, black.</p> <p>Filing date: 27 November 2014 Priority date: 27 May 2014 (UK) Status: Opposed</p>	<p>Class 35: Advertising; business management; business administration; office functions; retail services, online retail services, retail clothing shop services, wholesale and mail order services and the bringing together, for the benefit of others, of a variety of clothing, footwear, headgear, sports equipment, MP3 players, personal stereos, headphones, audio speakers, cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecom apparatus (including international</p>

	<p>prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered cards bearing printed matter, odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars, agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made of leather and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors, cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing</p>
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	<p>drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations, children's seats for use in cars, sporting articles and parts and fittings for all of the aforesaid goods, shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos, magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear, discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-</p>
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	<p>medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], petroleum jelly for cosmetic purposes, candles, air fresheners, petroleum jelly for medical purposes, antibacterial hand gel, calculators, weighing scales, money counters, glow whistle, memory sticks, kitchen scales, extension lead, plug adaptors, compression bandages, hot water bottles, torches, car screen shields, clocks, pens, calendars, highlighters, white boards, notebooks, tissues, magazines, packing tape, bags, puzzles, pet blankets, holdalls, clothes hangers, beds for pets, mugs, drink bottles, bowls, jugs, lunch box, money box, storage baskets, wristbands, footballs, chess set, travel games enabling customers to</p>
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	<p>conveniently view and purchase those goods; all the aforesaid not including retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p> <p>Class 41: Education; educational services; providing of training; entertainment; recording studio services for sound, films, videos and television; film distribution and production; publishing; concert and nightclub entertainment services; entertainer services; provision of educational or training material; arranging or seminars for educational purposes; showing of educational films; provision of entertainment; provision of cinema facilities; arranging and conducting of conferences and congresses, presentation of live performances, arranging and conducting of seminars and symposiums; motion picture production, live performances, theatrical productions, stage, screen and television entertainment services; audio programming; organising and conducting stage shows, theatre productions, contests, dances and parties; casino services; sporting and cultural activities; provision of recreational and sporting facilities; operation of leisure/fitness centres, recreational facilities and health clubs; entertainment services; amusement parks; leisure and fitness centres; health clubs; rental of sports equipment;</p>
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	<p>organisation of sporting activities, sporting events and competitions; publication of books; entertainment or educational club services; library services; camp services; arranging and conducting of conferences; dub and resort entertainment and recreation services; sports club services; leisure centre, health club, fitness centre and gymnasium services; provision of recreational facilities; provision of facilities relating to gymnastics, weight training, body building, aerobics and physical exercise; instructional services relating to gymnastics, weight training, body building, aerobics, physical exercises, physical rehabilitation; diet and nutrition services; health and beauty; information and advisory services relating to all the aforesaid services; fitness advisory services; advisory and consultancy services relating to sports, fitness and physical wellbeing ; provision of teaching facilities for sports and recreational activities; sports training and teaching academies; organisation of sporting competitions; sport camp services; vocational guidance services; rental of sports equipment; sports refereeing; rental of sporting apparatus; rental of sports facilities; rental of stadium facilities; training; holiday camp services (entertainment); nightclub services; entertainment services provided at nightclubs; training of non-medical staff in the care of children.</p>
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4) The first two trade marks in the table above are also relied upon under section 5(3) of the Act. The opponent argues that those marks have a high degree of distinctiveness and an extensive reputation in the UK. It further states, with supporting explanation, that the consumer will make a link between the respective marks leading to unfair advantage to the applicant and detriment to the earlier marks' reputation and distinctive character.

5) Under section 5(4)(a) of the Act, the opponent relies upon use of the mark **SPORTS DIRECT** throughout the UK since 5 August 2006 in relation to the following goods and services:

Games and playthings; gymnastic and sporting articles not included in other classes; apparatus for boxing; apparatus for skiing; body-building apparatus sporting articles for use in racquet games; string materials for sporting racquets; exercise equipment, other than for medical rehabilitative purposes; fitness exercise machines; decorations for Christmas trees; play tents; sports bags shaped to contain specific apparatus used in athletics [other than clothing or footwear]; balls; bats; baseball masks; body protectors; breast protectors; stomach protectors [adapted for use in a specific sport]; knee protectors adapted for use whilst playing sports; leg guards adapted for playing sport; shin pads [sports articles]; elbow guards (sport articles); hip-guards specially made for playing sports [parts of sports suits]; shin guards for athletic use; wrist guards for athletic use; fist guards [sporting articles]; hand protectors adapted for sporting use; gloves for sporting purposes [specifically adapted for]; apparatus for use in the game of football; football gloves; sporting articles for use in playing football [other than clothing or articles for protective purposes]; football or soccer goals; training apparatus for use in relation to football; goal nets; soccer ball goal nets; goal posts; whistles; parts and fittings for all of the foregoing; cards (Playing-).

Retail clothing shop services; the bringing together, for the benefit of others, of a variety of footwear, headgear; sporting articles and parts and fittings for the aforesaid goods; indexed books for the recordal of information relating to fitness training; enabling customers to conveniently view and purchase those goods; all the aforesaid excluding retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.

In addition, it relies upon use of the sign **SPORTSDIRECT FITNESS.COM** throughout the UK since 01 December 2014 in relation to the following services:

retail services, online retail services, retail clothing shop services, wholesale and mail order services and the bringing together, for the benefit of others, of a variety of clothing, footwear, headgear, sports equipment, wristbands, footballs, enabling customers to conveniently view and purchase those goods; all the aforesaid not including retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.

sporting and cultural activities; provision of recreational and sporting facilities; operation of leisure/fitness centres, recreational facilities and health clubs; leisure and fitness centres; health clubs; rental of sports equipment; organisation of sporting activities, sporting events and competitions; sports club services; leisure centre, health club, fitness centre and gymnasium services; provision of recreational facilities; provision of facilities relating to gymnastics, weight training, body building, aerobics and physical exercise; instructional services relating to gymnastics, weight training, body building, aerobics, physical exercises, physical rehabilitation; diet and nutrition services; health and beauty; information and advisory services relating to all the aforesaid services; fitness advisory services; advisory and consultancy services relating to sports, fitness and physical wellbeing ; provision of teaching facilities for sports and recreational activities; sports training and teaching academies; organisation of sporting competitions; sport camp services; rental of sports equipment; sports refereeing; rental of sporting apparatus; rental of sports facilities; rental of stadium facilities.

6) The opponent argues that the similarities between the respective marks and the identity and similarity between the goods and services are such as to misrepresent to consumers that there is a connection, or mutual source of origin with the opponent's mark, leading to damage to the opponent.

7) The trade marks relied upon by the opponent are earlier marks, in accordance with section 6 of the Act (this includes European Union trade mark No. 013519194 subject to it being registered). As none of the marks relied upon completed their registration procedure more than five years prior to the publication date of the contested mark, they are not subject to the proof of use conditions, as per section 6A of the Act.

8) The applicant filed a counterstatement in which it requested the opponent provide proof of use of the earlier marks. However, for the reasons given above, the opponent is not required to do so.¹ The applicant denies that there is any resemblance in colour, text, shape or style between the marks. It also states, inter alia, the following:

¹ The official letter of 21 January 2016 also refers.

“Sports Direct has a strong retail high street presence, whereas Fitness Direct has no intention of becoming a bricks and mortar retail business....”

9) Only the opponent filed evidence. Neither party requested to be heard. Only the applicant filed written submissions in lieu of a hearing. I now make this decision on the basis of the papers before me.

Opponent’s evidence

10) The opponent’s evidence comes from Rob White, Senior Associate at Lane IP Limited, the opponent’s representative in these proceedings.

11) Mr White provides dictionary definitions of the word ‘fitness’ to show the clear conceptual link to sports. He also provides a print from the opponent’s website SportsDirect.com from 2016 and draws my attention to the statement therein which reads “From fitness supports to sweatbands and gym bags you’ll find all the accessories you need to enhance your workout training programme”. This is said to demonstrate the interest the opponent has in fitness goods and the use of the term ‘fitness’. There is also a printout of the results of a Google search conducted in April 2016 for the phrase ‘SPORTS DIRECT FITNESS’ and a print from the opponent’s SPORTS DIRECT FITNESS website from 2016, intending to show that the opponent has its own fitness related website with gym memberships.

DECISION

12) Section 5(2)(b) of the Act states:

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

(a)....

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

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

13) The leading authorities which guide me are from the Court of Justice of the European Union ('CJEU'): *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

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

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

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

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

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

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

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

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

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

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

(k) if the association between the marks creates a risk that the public will wrongly 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

14) Although the opponent relies upon a large number of goods and services, in its submissions it focuses on its goods in class 28 and services in classes 35 and 41. It seems to me that, if the opponent cannot succeed in relation to those classes, it will not succeed in relation to the others. Proceeding on that basis, and taking the term(s) within each of those classes that represent the opponent's best prospect of success, the goods and services to be compared are:

Applicant's goods	Opponent's UK TM 2597152B & UK TM 2598201
<p>Class 28: Back supports [belts] for weightlifters; Belts for weightlifting; Belts (Weight lifting -) [sports articles]; Benches for sporting use; Bicycles (Stationary exercise -); Body toner apparatus [exercise]; Body training apparatus [exercise]; Body-building apparatus; Body-building apparatus [exercise]; Body-training apparatus; Cycling machines [stationary]; Dumb-bell shafts [for weight lifting]; Dumb-bells; Dumb-bells [for weight lifting]; Elbow guards [sports articles]; Exercise bicycles (Stationary -); Exercise trampolines; Exercise treadmills; Exercise weights; Exercisers [expanders]; Floats for bathing and swimming; Flotation apparatus for swimming; Gymnastic and sporting articles not included in other classes; Indoor fitness apparatus; Kick board flotation devices for recreational use; Kick boards; Kickboard flotation devices for recreational use; Knee guards for athletic use; Knee guards [sports articles]; Knee pads for athletic use; Physical exercises (Machines for -); Shin guards for athletic use; Shin guards [sports articles]; Shin pads for athletic use; Shin pads for use in sports; Shin pads [sports articles]; Shin protectors</p>	<p>Class 28: Gymnastic and sporting articles not included in other classes.</p> <p>Class 35: ...the bringing together, for the benefit of others, of a variety of ...sporting articles... enabling customers to conveniently view and purchase those goods.</p>
	<p style="text-align: center;">Opponent's EU TM 13519194</p> <p>Class 35: ...the bringing together, for the benefit of others, of a variety of ... sports equipment... enabling customers to conveniently view and purchase those goods.</p> <p>Class 41: ...leisure and fitness centres; health clubs; rental of sports equipment; organisation of sporting activities, ...; sports club services; leisure centre, health club, fitness centre and gymnasium services; provision of recreational facilities; provision of facilities relating to gymnastics, weight training, body building, aerobics and physical exercise; ...rental of sports equipment; ... rental of sporting apparatus;...</p>

[sports articles]; Shock absorption pads for protection against injury [sporting articles]; Skipping ropes; Sports training apparatus; Weight lifting belts [sports articles]; Weight lifting benches; Wrist and ankle weights for exercise; Wrist guards for athletic use; Yoga blocks; Yoga straps.	
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15) In the judgment of the CJEU in *Canon*, Case C-39/97, the Court stated at paragraph 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”.

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

17) In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

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

18) In *Sanco SA v OHIM*, Case T-249/11, the General Court (‘GC’) indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

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

Whilst on the other hand:

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

19) In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05 (‘*Meric*’), the GC stated that:

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

Similarity between the applicant’s goods and the goods and services of UK TMS 2597152B & 2598201

20) As all of the applicant’s goods are encapsulated by the opponent’s broad term ‘Gymnastic and sporting articles’ in class 28, the respective goods are identical in accordance with *Meric*.

21) As regards the similarity between the applicant’s goods and the opponent’s services in class 35, I bear in mind that, in *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46- 57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BLO/391/14, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, reviewed the law concerning retail services v goods; he stated:

“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.”

However, on the basis of the European courts’ judgments in *Sanco SA v OHIM* and *Assembled Investments (Proprietary) Ltd v. OHIM*, upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*, 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 retail services and a mark proposed to be registered for goods (or vice versa), it is necessary to envisage the retail services normally associated with the applicant’s goods and then to compare the applicant’s goods with the retail services covered by the opponents’ 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).

22) All of the applicant’s goods are types of sporting articles and are therefore identical to the goods referred to in the opponent’s class 35 specifications. Bearing this in mind, I find that the relevant complementary relationship exists between the applicant’s goods and the opponent’s class 35 services resulting in a medium degree of similarity between them.

Similarity between the applicant's goods and the goods and services of EUTM 13519194

23) My conclusions in the preceding paragraph are equally applicable here in relation to the class 35 services of the opponent.

24) Turning to the similarity between the applicant's goods and the opponent's services in class 41, the opponent argues that these are directly related, complementary and thus highly similar. I agree that there is a complementary relationship between the applicant's goods and certain of the opponent's services such as 'rental of sporting apparatus/equipment' given that the former is indispensable to the latter. The nature of the respective goods and services differs as does their purpose and method of use. However, the users and trade channels may overlap and there is a degree of competition in play given that a consumer may choose between purchasing a weight lifting bench (for example) and renting one or visiting a leisure/fitness centre to use one there. I find there to be a medium degree of similarity between the applicant's goods and the opponent's services in class 41.

Average consumer and the purchasing process

25) It is necessary to determine who the average consumer is for the respective goods and services and the manner in which they are likely to be selected. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

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

The average consumer is an ordinary member of the public, with an interest in sporting activities. I would expect such a consumer to pay an average degree of attention when selecting most of the goods and services at issue. However, where the goods are for the purpose of protection from injury, or are likely to be expensive infrequent purchases (such as treadmills or exercise bikes), the consumer is likely to take more care over their purchase such that an above average level of attention may be afforded. The same is true for the class 35 services of the opponent relating to those goods and to class 41 insofar as services such as rental of those goods is concerned. I would expect all of the goods and services at issue to be purchased mainly by eye however, I do not discount the potential for aural use of the marks.

Comparison of marks

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

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

27) For ease of reference, the marks to be compared are:

Applicant's marks	Opponent's marks
  (Series of 2)	i)   (Series of 2) ii)   (Series of 2) iii) 

28) The applicant's marks both contain, what will be perceived as, the words 'FITNESS DIRECT' together with a pulse reading image ('pulse') presented in red which protrudes into the latter two words so as to substitute the letter 'I' in both. The black background in the second of the marks acts as little more than a backdrop for the other elements; it has the least weight in the overall impression. Both the words FITNESS DIRECT and the pulse make a substantial contribution to the overall impression and have roughly equal weight.

29) Mark i) of the opponent consists of a series of two marks. There is no material difference between them, with both clearly consisting of the two words SPORTS and

DIRECT. The overall impression of the marks is based on the combination of those two words with neither having more weight than the other.

30) Mark ii) also consists of a series of two marks which are materially the same. They both consist of the words SPORTS (in blue) and DIRECT (in red) followed by .COM (in blue). Given its relative size and distinctiveness, being a domain indicator, the latter has the least weight in the overall impression (without being negligible). The combination of the two words SPORTS and DIRECT has the greatest weight in the overall impression.

31) Mark iii) of the opponent consists of the word SPORTS (in blue) followed by the word DIRECT (in red) and the words FITNESS.COM presented on a yellow shape. It is the words SPORTSDIRECT which have the greatest weight in the overall impression. The words FITNESS.COM also contribute to the overall impression but to a lesser extent given their relative distinctiveness and positioning at the end of the mark. The yellow shape contributes to an even lesser extent to the overall impression (without being negligible).

32) I now turn to consider the visual, aural and conceptual similarities between the marks, taking each of the opponent's marks in turn.

i)

SPORTSDIRECT

SPORTS DIRECT

33) The opponent argues that the presence of the word DIRECT in the respective marks renders them visually highly similar. I disagree. Aside from the common inclusion of the word DIRECT, they are, in all other respects, very different to the eye bearing in mind that the pulse element is absent from the opponent's marks and the words SPORTS and FITNESS are visually very different. Considering the marks as wholes, there is a very low degree of visual similarity. In terms of how the marks will be vocalised, this will be entirely predictable i.e. FIT-NES-DYE-RECT v SPOR-TS-

DYE-RECT. Whilst both marks share the same third and fourth syllables, the first and second syllables, which will be the first to impact on the ear, are quite different. There is a low degree of aural similarity overall. In terms of how the marks will be perceived, I am not convinced that any of the marks evoke an immediately graspable concept. However, if I am wrong, any conceptual hook will be highly similar with both sending an allusive message of sport/fitness related goods/services provided straight to the consumer. The pulse in the applicant's marks is unlikely to form part of any immediately graspable conceptual hook.

ii)

The logo consists of the words "SPORTS" in blue and "DIRECT.COM" in red, both in a bold, sans-serif font.The logo consists of the word "SPORTS" in blue and "DIRECT.COM" in red, both in a bold, sans-serif font.

34) Similar considerations apply to the above mark. Factoring in the additional '.COM' element and the presentation of this mark in blue and red, I find that there is a very low degree of visual similarity, a low degree of aural similarity and that, if any conceptual hook is grasped, it will again be highly similar given that the '.COM' element is unlikely to add or detract from any immediately graspable concept portrayed by the words SPORTS DIRECT.

iii)

The logo consists of the words "SPORTSDIRECT" in blue and "FITNESS.COM" in black, both in a bold, sans-serif font.

35) The opponent argues that the inclusion of the words DIRECT and FITNESS in the respective marks and the presence in both of the colours red and black, results in a high degree of visual similarity. I disagree. These points are outweighed by the very different arrangement of those elements in the respective marks and the other aspects of the marks being visually distinct. If there is any visual similarity between the marks, when viewed as wholes, it is of a very low degree. Similarly, if there is

any aural similarity between FIT-NES-DYE-RECT v SPORTS-DYE-RECT-FIT-NES-DOT-COM it is of a very low degree. It may be that the consumer does not articulate the 'FITNESS.COM' element; in those circumstances, there would still only be a low degree of aural similarity. Conceptually, any immediately graspable conceptual message is likely to come from the respective words FITNESS DIRECT and SPORTS DIRECT which will be highly similar for reasons already explained. The additional concept portrayed by the separate FITNESS.COM element does nothing, in my view, to materially supplement or alter that immediate conceptual message.

Distinctive character of the earlier marks

36) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

From an inherent perspective, I find that mark i) is possessed of only a low degree of distinctive character for the goods in class 28 and services in class 35. This is because the word ‘SPORTS’ clearly refers to the purpose of the goods/services and the word ‘DIRECT’ is allusive (at least) of the channels/manner in which the goods and services are likely to reach the consumer. The combination of those two words, although not naturally descriptive (‘sports goods direct’, for example, being more of an apt description), is allusive. Similar considerations apply to marks ii) and iii). The colours of those marks and the presence of the ‘.COM’/‘FITNESS.COM’ on the yellow shape do nothing to elevate the marks’ distinctiveness beyond a low level.

37) I now turn to the question of whether the marks have been used to the extent that their inherent level of distinctiveness has been increased. The evidence before me clearly comes nowhere near establishing this. There is nothing in the way of turnover or advertising figures, information about market share or any other information regarding the intensity or geographical extent of use prior to the relevant date. However, I note that the opponent submits:

“It is noted that the applicant admits in the counterstatement to the opponent having a ‘strong retail high street presence’ which supports the fact that the opponent has an enhanced distinctiveness in its marks through significant and long use and has a reputation in its marks, thus increasing the risk of a likelihood of confusion and association arising between the respective marks.”

I am not convinced that I should construe the unrepresented applicant’s comments in the manner contended by the opponent. To my mind, they are ambiguous, not least because they do not specify the kind of retail ‘presence’ (i.e. retail of what goods). I intend to proceed on the basis of the inherent level of distinctiveness of the earlier marks which, as stated above, is low. However, I will keep in mind the opponent’s comments and will return to them later, if necessary.

Likelihood of confusion

38) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

Marks i) and ii)

39) I have found that both earlier marks have a very low degree of visual similarity and a low degree of aural similarity with the applicant's marks. Both of these factors, and particularly the former (given that the purchase is likely to be mainly visual), point away from a likelihood of confusion. I have also found that the earlier marks have a low degree of distinctiveness; another factor pointing away from a likelihood of confusion. In terms of any immediately graspable concept portrayed by the marks, this is highly similar, however it is not a particularly distinctive one in the context of the relevant goods and services owing to its allusive nature. Whilst it is true that allusive marks may be confused, each case must be assessed on its own merits. In the case before me, I consider that point of similarity to be insufficient to outweigh the very low degree of visual similarity and low degree of aural similarity. Notwithstanding the identity/medium degree of similarity between the goods and services, I find that, even where the average consumer pays only an average degree of attention, they are unlikely to mistake one mark for the other; there is no likelihood of direct confusion. I also do not consider that the average consumer is likely to believe that the respective goods and services emanate from the same or linked undertaking(s). The common element is not "so strikingly distinctive"², the applicant's

² *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, [16].

marks do not “simply add a non-distinctive element to the earlier mark”³, they do not appear to me to be “entirely logical and consistent with a brand extension”⁴ of the opponent’s marks and I cannot see any other reason why the marks may be indirectly confused. I reach the same conclusions even if I were to accept the opponent’s contention that the applicant has conceded to its marks having a strong distinctive character because of the use made of them. I still do not consider that this, when weighed against all other factors, would result in a likelihood of confusion.

Mark iii)

40) Insofar as mark iii) is concerned, I found this mark to be low in distinctiveness and that, if there is any visual similarity between it and the applicant’s marks, it is of a very low degree. The aural similarity with the applicant’s marks is also very low or low, depending on whether the whole mark is vocalised. Again, I consider that the degree of visual and aural similarity outweighs the highly similar concept portrayed by the marks. Despite the identity and medium similarity between the goods and services, there is no likelihood of direct confusion. Neither is there a likelihood of indirect confusion, for similar reasons to those given above. The same conclusion applies even if I were to factor in the earlier mark having a strong distinctive character through the use made of it.

41) The claim under section 5(2)(b) of the Act is dismissed.

Sections 5(4)(a) & 5(3)

42) In the circumstances, I need deal with these grounds of opposition only briefly.

43) Dealing first with the claim under section 5(4)(a) of the Act, even if I were to find that the applicant has conceded to the opponent having the requisite goodwill, the opponent is in no better position here than under section 5(2)(b). The claim under section 5(4)(a) of the Act is dismissed.

³ ibid

⁴ ibid

44) Turning to the claim under section 5(3) of the Act, even if I were to find that the applicant has conceded to the opponent having the requisite reputation, and that a link would be made between the marks, none of the heads of damage are made out. In terms of 'unfair advantage', the opponent has not shown that its marks have any particular image that could transfer to the applicant's goods or how or why any such transfer would occur⁵. As to 'dilution'/'blurring', the opponent has not shown how, in the absence of confusion, the economic behaviour of the consumer would change⁶ and, insofar as 'tarnishing' is concerned, the opponent's claim that the applicant may provide inferior quality goods leading to detriment to its reputation amounts to nothing more than conjecture. There is no evidence to suggest that the applicant already has a negative reputation for providing poor quality goods and there is nothing inherent in the applicant's goods that would cause any form of negative reaction.⁷ The claim under section 5(3) of the Act is dismissed.

OUTCOME

45) The opposition fails.

COSTS

46) As the applicant has been successful, it is entitled to a contribution towards its costs. Using the guidance in Tribunal Practice Notice 4/2007, which was in force when these proceedings commenced, but keeping mind that the applicant has not incurred the expense of legal representation and that its submissions in lieu of a hearing were identical to those in the counterstatement, I award the applicant costs on the following basis:

Preparing a statement and considering
the opponent's statement

£100

⁵ See Case C-487/07, *L'Oreal v Bellure* [2009] ETMR 55 [41]

⁶ See Case 252/07, *Intel*, [2009] ETMR 13 [76-77]

⁷ See *Cristalino* case [2015] EWCH 2760 (Ch) [89-90]; *Unite The Union v The Unite Group Plc* (BL O/219/13) [46-47]

Total:

£100

47) I order Sportsdirect.com Retail Limited to pay Fitness Direct Ltd the sum of **£100**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 31st day of January 2017

A handwritten signature in black ink, appearing to be 'B Hedley', written over a horizontal line.

Beverley Hedley

For the Registrar,

the Comptroller-General

Annex 1

Full details of the trade marks and goods and services relied upon under sections 5(2)(b) and 5(3).

Trade Mark details	Goods and services relied upon
<p>UK TM Registration No: 2597152B</p> <p>SPORTSDIRECT</p> <p>SPORTS DIRECT</p> <p>(Series of 2)</p> <p>Filing date: 04 October 2011</p> <p>Date of entry in register: 03 August 2012</p>	<p>Class 9: MP3 players; personal stereos; headphones; audio speakers; cellular phones; phone appliances; phone covers [specifically adapted]; helmets (Protective-) excluding cycling helmets; skateboard helmets; eyewear; goggles for skiing; sunglasses; straps for sunglasses; carrying cases adapted for sunglasses; batteries; battery chargers; programmable timers; downloadable publications, namely, company magazines downloaded via the Internet; audio recordings; discs bearing video recordings; books recorded on disc; telecommunications apparatus (including International prepaid phonecards and electronic vouchers); shaped covers for the controls of electrical apparatus; plastic covered cards bearing printed matter [encoded]; protective clothing for participants in motor sports [for the prevention of accidents]; protective clothing for diving; safety survival suits; mouth protectors; parts and fittings for the aforesaid goods.</p>

Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery; luggage; belts made of leather; belts made of imitation leather; wallets for attachment to belts; wallets; purses; pouches; golf umbrellas; luggage straps; garment bags; briefcases; art portfolios [cases]; leather portfolios [covers]; Portfolios [briefcases] attache cases; handbags; evening bags; clutch bags; tote bags; athletic bags; duffel bags; gym bags; sports bags, other than shaped to contain specific apparatus used in playing sports; beach bags; shoe bags; diaper bags; shopping bags; shopping carts [wheeled shopping bags]; cosmetic bags; toiletry bags; school bags; knapsacks; waist packs; billfolds; business card cases; credit card cases; key cases; key holders; key pouches; backpacks; schoolchildren's backpacks; framed carrying apparatus in the nature of rucksacks for carrying babies; shoulder bags; overnight bags; parts and fittings for the aforesaid goods.

Class 25: Clothing, footwear, headgear; sleeping attire; fashion-wear; leisurewear; sports shoes; trainers; boots; walking boots; football boots; waterproof clothing; weatherproof clothing; thermal clothing;

	<p>lightweight clothing; coats; exercise wear; sportswear; swimwear; wet suits; surf shorts; protective clothing for surfing; ski wear; jackets; anoraks; pullovers; trousers; shirts; T-shirts; cagoules; smocks; salopettes; scarves; belts [clothing]; gloves; hats; balaclavas; socks; underwear; gaiters; football jerseys; replica football kits; safety clothing [other than for protection against accident or injury]; sports headgear [other than helmets]; safety footwear [other than for protection against accident or injury]; sports uniforms; clothing for equestrian use; studs for football boots [shoes]; armbands [clothing]; all the aforesaid excluding clothing for cyclists including gloves in class 25.</p> <p>Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; apparatus for boxing; apparatus for skiing; body-building apparatus sporting articles for use in racquet games; string materials for sporting racquets; exercise equipment, other than for medical rehabilitative purposes; fitness exercise machines; decorations for Christmas trees; play tents; sports bags shaped to contain specific apparatus used in athletics [other than clothing or footwear]; balls; bats; baseball masks; body protectors; breast protectors; stomach protectors [adapted for use in a specific sport]; knee protectors adapted for use whilst playing sports; leg</p>
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guards adapted for playing sport; shin pads [sports articles]; elbow guards (sport articles); hip-guards specially made for playing sports [parts of sports suits]; shin guards for athletic use; wrist guards for athletic use; fist guards [sporting articles]; hand protectors adapted for sporting use; gloves for sporting purposes [specifically adapted for]; apparatus for use in the game of football; football gloves; sporting articles for use in playing football [other than clothing or articles for protective purposes]: football or soccer goals; training apparatus for use in relation to football; goal nets; soccer ball goal nets; goal posts; whistles; parts and fittings for all of the foregoing; cards (Playing-).

Class 35: Retail clothing shop services; the bringing together, for the benefit of others, of a variety of footwear, headgear, MP3 players, personal stereos; headphones; audio speakers cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecommunication apparatus (including international prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered cards bearing printed matter,

	<p>odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars, printed agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made of leather and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors; cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations; children's seats for use in cars; sporting articles and parts and fittings for all of the aforesaid goods;</p>
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	<p>shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos, magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear, discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary</p>
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	<p>supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], enabling customers to conveniently view and purchase those goods; all the aforesaid excluding retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p> <p>Class 39: Arrangement of transportation of retail goods; arranging transportation of goods.</p>
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UK TM Registration No: 2598201

SPORTS DIRECT.com

**SPORTS
DIRECT.com**

(Series of 2)

Filing date: 17 October 2011

Date of entry in register: 13 July
2012

Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; mouthwashes; preparations for freshening the breath [not medicated]; toiletries; towels containing non-medicated toilet preparations; hair colorants; hair waving preparations; hair care products; hair spray; gels for use on the hair; skincare preparations; hand care preparations; body care products [non-medicated]; oil for the body; deodorants; antiperspirants; non-medicated toilet preparations; depilatory preparations; artificial tanning preparations; sun tanning preparations; shaving preparations; non-medicated preparations for use after shaving; dyes for the beard; hair bleaching preparations; lip balms (non-medicated-); nail care preparations; nail varnish; emery boards; emery paper; emery cloth; bath salts, not for medical purposes; talcum powder; beard softeners.

Class 5: Vitamin and mineral supplements; nutritional and dietary supplements; meal replacement powders; meal replacement and dietary supplement drink mixes; stimulants made of vitamins; muscle relaxants; gauze bandages [dressings]; tapes for bandaging; powdered dietary food concentrates for use in

	<p>a weight reduction programme for medical purposes; dietetic substances for medical use in weight control; foods for persons having complex metabolic disorders; dietetic food preparations having a low fat content [adapted for medical purposes].</p> <p>Class 9: MP3 players; personal stereos; headphones; audio speakers; cellular phones; phone appliances; phone covers [specifically adapted]; helmets (Protective-), excluding cycling helmets; skateboard helmets; eyewear; goggles for skiing; sunglasses; straps for sunglasses; carrying cases adapted for sunglasses; batteries; battery chargers; programmable timers; company magazines downloaded via the internet; audio recordings; discs bearing video recordings; books recorded on disc; telecom apparatus (including International prepaid phonecards and electronic vouchers); tokens for activating electrical, electronic and telecommunications apparatus and instruments ; flexible (Shaped-) covers for the controls of electrical apparatus; plastic covered cards bearing printed matter [encoded]; odontoguards; protective clothing for participants in motor sports [for the prevention of accidents]; protective clothing for diving; safety survival suits; parts and fittings for the aforesaid goods</p> <p>Class 14: Watches; clocks; chronometers;</p>
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	<p>jewellery; jewellery cases</p> <p>Class 16: Shopping [carrier] bags of plastic; block notepads; desk note pads; removable self-stick notes; catalogues; gift vouchers; cases for pens; ink pens; pencils; stationery; adhesive for stationery purposes; calendars; agendas; diaries [printed matter]; wall charts for use as diaries; printed matter; photographs; artists materials; greeting cards; cards made of plastic [other than encoded or magnetic]; decalcomanias; removable tattoos; magazines [periodicals]; books; indexed books for the recordal of information relating to fitness training</p> <p>Class 18: Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery; luggage; belts made of leather; belts made of imitation leather; wallets for attachment to belts; wallets; purses; pouches; golf umbrellas; luggage straps; garment bags; briefcases; art portfolios [cases]; leather portfolios [covers]; Portfolios [briefcases]; attache cases; handbags; evening bags; clutch bags; tote bags; athletic bags;duffel bags; gym bags; sports bags, other than shaped to contain specific apparatus used in playing sports; beach bags; shoe bags; diaper bags; shopping bags; shopping carts</p>
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	<p>[wheeled shopping bags]; cosmetic bags; toiletry bags; school bags; knapsacks; waist packs; billfolds; business card cases; credit card cases; key cases; key holders; key pouches; backpacks; schoolchildren's backpacks; framed carrying apparatus in the nature of rucksacks for carrying babies; shoulder bags; overnight bags; parts and fittings for the aforesaid goods</p> <p>Class 20: Sleeping bags; pillows; inflatable pillows [other than for medical use] for fitting around the neck; foam camping mattresses; camping furniture</p> <p>Class 21: Mugs; containers for food; Lunch boxes; Containers for household use for storage purposes; cocktail shakers; fruit juice extractors (hand-operated); mixers, manual [cocktail shakers]; mixers (Non-electric-) for mixing drinks; storage receptacles for household use; thermally insulated flasks for household use</p> <p>Class 22: Tents</p> <p>Class 25: Clothing, footwear, headgear; sleeping attire; fashion-wear; leisurewear; sports shoes; trainers; boots; walking boots; football boots; waterproof clothing; weatherproof clothing; thermal clothing; lightweight clothing; coats; exercise wear; sportswear; swimwear; wet suits; surf shorts;</p>
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protective clothing for surfing; ski wear; jackets; anoraks; pullovers; trousers; shirts; T-shirts; cagoules; smocks; salopettes; scarves; belts [clothing]; gloves; hats; balaclavas; socks; underwear; gaiters; football jerseys; replica football kits; safety clothing [other than for protection against accident or injury]; safety gloves [other than for protection against accident or injury]; sports headgear [other than helmets]; safety footwear [other than for protection against accident or injury]; sports uniforms; clothing for equestrian use; studs for football boots [shoes]; armbands [clothing]; all the aforesaid excluding clothing for cyclists, including gloves, in Class 25.

Class 28: Games and playthings; gymnastic and sporting articles not included in other classes; apparatus for boxing; apparatus for skiing; body-building apparatus; sporting articles for use in racquet games; string materials for sporting racquets; exercise equipment, other than for medical rehabilitative purposes; fitness exercise machines; decorations for Christmas trees; play tents; sports bags shaped to contain specific apparatus used in athletics [other than clothing or footwear]; balls; bats; baseball masks; body protectors; breast protectors; stomach protectors [adapted for use in a specific sport]; knee protectors adapted for use whilst playing sports; leg

guards adapted for playing sport; shin pads [sports articles]; elbow guards (sport articles); hip-guards specially made for playing sports [parts of sports suits]; shin guards for athletic use; wrist guards for athletic use; fist guards [sporting articles]; hand protectors adapted for sporting use; gloves for sporting purposes [specifically adapted for]; apparatus for use in the game of football; football gloves; sporting articles for use in playing football [other than clothing or articles for protective purposes]; football or soccer goals; training apparatus for use in relation to football; goal nets; soccer ball goal nets; goal posts; whistles; parts and fittings for all of the foregoing; cards (Playing-)


Class 29: Proteinaceous preparations in the form of bars for human consumption; snack bars [foodstuffs]

Class 32: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; cordials; isotonic drinks [not for medical purposes]; energy drinks containing caffeine; shandy; preparations for making non alcoholic drinks; sorbets [beverages]; seltzers [beverages]; non-alcoholic; tisanes [non-medicated beverages and other than tea based]; beverages for use as aids to slimming [not for medical purposes]

Class 35: Retail clothing shop services; the bringing together, for the benefit of others, of a variety of footwear, headgear, MP3 players, personal stereos, headphones, audio speakers cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecom apparatus (including International prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered cards bearing printed matter, odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars, agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made leather and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key

	<p>cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors, cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations, children's seats for use in cars, sporting articles and parts and fittings for all of the aforesaid goods, shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos, magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear, discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-</p>
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	<p>medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], enabling customers to conveniently view and purchase those goods; all the aforesaid excluding retail services</p>
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	<p>connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p> <p>Class 39: Arrangement of transportation of retail goods; arranging transportation of goods</p>
<p>European Union Trade Mark Application No: 13519194</p>  <p>Colours Claimed/Indication: Blue "(Pantone Reflex C)", red "(Pantone 485 C)", yellow, black.</p> <p>Filing date: 27 November 2014 Priority date: 27 May 2014 (UK) Status: Opposed</p>	<p>Class 35: Advertising; business management; business administration; office functions; retail services, online retail services, retail clothing shop services, wholesale and mail order services and the bringing together, for the benefit of others, of a variety of clothing, footwear, headgear, sports equipment, MP3 players, personal stereos, headphones, audio speakers, cellular phones, phone appliances, phone covers, helmets, eyewear, goggles for skiing, sunglasses, straps for sunglasses, carrying cases adapted for sunglasses, batteries, battery chargers, programmable timers, telecom apparatus (including international prepaid phonecards and electronic vouchers), tokens for activating electrical, electronic and telecommunications apparatus and instruments, flexible covers for the controls of electrical apparatus, encoded plastic covered</p>

	<p>cards bearing printed matter, odontoguards, watches, clocks, chronometers, jewellery, jewellery cases, cases for pens, ink pens, pencils, stationery, adhesive for stationery purposes, calendars, agendas, diaries [printed matter], wall charts for use as diaries, printed matter, photographs, artists materials, greeting cards, cards made of plastic, goods made of leather and imitation leather, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness, saddlery, luggage, wallets for attachment to belts, wallets, purses, pouches, golf umbrellas, luggage straps, bags, briefcases, portfolios, briefcases, attache cases, knapsacks, waist packs, billfolds, business card cases, credit card cases, key cases, key holders, key pouches, backpacks, schoolchildren's backpacks, framed carrying apparatus in the nature of rucksacks for carrying babies, bedlinen, sleeping bags, pillows, inflatable pillows [other than for medical use] for fitting around the neck, foam camping mattresses, camping furniture, mugs, containers for food, lunch boxes, containers for household use for storage purposes, fruit juice extractors, cocktail shakers, mixers, manual [cocktail shakers], non-electric mixers for mixing drinks, storage receptacles for household use, thermally insulated flasks for household use, tents, Christmas decorations, children's seats for use in cars, sporting articles and parts and fittings for all of the aforesaid</p>
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	<p>goods, shopping [carrier] bags of plastic, block notepads, desk note pads, removable self-stick notes, catalogues, gift vouchers, decalcomanias, removable tattoos, magazines, books, indexed books for the recordal of information relating to fitness training, discs bearing video recordings, books recorded on disc, protective wear, discs bearing video recordings, playing cards, snack bars, bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumery, essential oils, cosmetics, hair lotions, dentifrices, mouthwashes, preparations for freshening the breath, toiletries, towels containing non-medicated toilet preparations, hair colorants, hair waving preparations, hair care products, hair spray, gels for use on the hair, skincare preparations, hand care preparations, body care products [non-medicated], oil for the body, deodorants, antiperspirants, non-medicated toilet preparations, depilatory preparations, artificial tanning preparations, sun tanning preparations, shaving preparations, non-medicated preparations for use after shaving, dyes for the beard, hair bleaching preparations, lip balms (non-medicated-), nail care preparations, nail varnish, emery boards, emery paper, emery cloth, bath salts, not for medical purposes, talcum powder, beard softeners, vitamin and mineral supplements, nutritional and dietary</p>
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	<p>supplements, meal replacement powders, meal replacement and dietary supplement drink mixes, stimulants made of vitamins, medicated food for sportsmen, muscle relaxants, cold creams for the treatment of sporting injuries, gauze bandages [dressings], tapes for bandaging, powdered dietary food concentrates for use in a weight reduction programme for medical purposes, dietetic substances for medical use in weight control, foods for persons having complex metabolic disorders, dietetic food preparations having a low fat content [adapted for medical purposes], petroleum jelly for cosmetic purposes, candles, air fresheners, petroleum jelly for medical purposes, antibacterial hand gel, calculators, weighing scales, money counters, glow whistle, memory sticks, kitchen scales, extension lead, plug adaptors, compression bandages, hot water bottles, torches, car screen shields, clocks, pens, calendars, highlighters, white boards, notebooks, tissues, magazines, packing tape, bags, puzzles, pet blankets, holdalls, clothes hangers, beds for pets, mugs, drink bottles, bowls, jugs, lunch box, money box, storage baskets, wristbands, footballs, chess set, travel games enabling customers to conveniently view and purchase those goods; all the aforesaid not including retail services connected with the sale of cycle parts or cycle accessories, cycle helmets, cycle bags, cycling gloves and clothing for cycling.</p>
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	<p>Class 41: Education; educational services; providing of training; entertainment; recording studio services for sound, films, videos and television; film distribution and production; publishing; concert and nightclub entertainment services; entertainer services; provision of educational or training material; arranging or seminars for educational purposes; showing of educational films; provision of entertainment; provision of cinema facilities; arranging and conducting of conferences and congresses, presentation of live performances, arranging and conducting of seminars and symposiums; motion picture production, live performances, theatrical productions, stage, screen and television entertainment services; audio programming; organising and conducting stage shows, theatre productions, contests, dances and parties; casino services; sporting and cultural activities; provision of recreational and sporting facilities; operation of leisure/fitness centres, recreational facilities and health clubs; entertainment services; amusement parks; leisure and fitness centres; health clubs; rental of sports equipment; organisation of sporting activities, sporting events and competitions; publication of books; entertainment or educational club services; library services; camp services; arranging and conducting of conferences; dub and resort entertainment and recreation</p>
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	<p>services; sports club services; leisure centre, health club, fitness centre and gymnasium services; provision of recreational facilities; provision of facilities relating to gymnastics, weight training, body building, aerobics and physical exercise; instructional services relating to gymnastics, weight training, body building, aerobics, physical exercises, physical rehabilitation; diet and nutrition services; health and beauty; information and advisory services relating to all the aforesaid services; fitness advisory services; advisory and consultancy services relating to sports, fitness and physical wellbeing ; provision of teaching facilities for sports and recreational activities; sports training and teaching academies; organisation of sporting competitions; sport camp services; vocational guidance services; rental of sports equipment; sports refereeing; rental of sporting apparatus; rental of sports facilities; rental of stadium facilities; training; holiday camp services (entertainment); nightclub services; entertainment services provided at nightclubs; training of non-medical staff in the care of children.</p> <p>Class 43: Services for providing food and drink; provision of temporary accommodation; cafe, restaurant, bar, club, public house, cafeteria and catering services; cafeterias, self-service restaurants; snack bars; coffee shops; restaurants; provision of restaurant</p>
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	<p>and drinking house facilities; catering; accommodation services; hotel and hotel reservation services; day nurseries; camp services; crèche services; catering services for the provision of food and drink; club, hotels; hotel reservation, restaurant, public house, café and cafeteria services; organising and providing facilities for conferences and exhibitions; children care; child care centres; providing child care centres.</p> <p>Class 44: Medical services; beauty salons; turkish baths; beauty salons; provision of turkish baths facilities; hairdressing; hairdressing services; manicure and pedicure services; consultancy in the field of beauty, body and skincare, make up and dress; massage; physical therapy; sun tanning salons; sun tanning salons services; provision of sauna facilities; hairdressing salons; aromatherapy; reflexology; chiropody; provision of exercise and steam facilities; medical, hygienic and beauty care services; baths; massage; physiotherapy; health care relating to homeopathy; provision of exercise and steam rooms; midwifery services; pharmacy advice; plastic surgery; hospital services; convalescent services; hair implantation; opticians services; dentistry services; physiotherapy services; aromatherapy services; cosmetic body care services; nutritional guidance; dietary guidance; cosmetic dentistry</p>
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	services; dietician services; dietetic and nutritional advice; non-business consultancy in the field of body care.
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