

**0/453/19**

**TRADE MARKS ACT 1994**

**TRADE MARK APPLICATION 3232605 BY ACQUISITION 395215436 LIMITED**

**AND**

**OPPOSITION No. 409964 BY WESTAR INTERNATIONAL CORPORATION**

**AND**

**TRADE MARK REGISTRATION No. 3180687 IN THE NAME OF WESTAR  
INTERNATIONAL CORPORATION**

**AND**

**APPLICATION 501670 BY ACQUISITION 395215436 LIMITED**

**FOR THE REGISTRATION OF TRADE MARK No. 3180687**

**TO BE DECLARED INVALID**

## Background and pleadings

1. These consolidated proceedings between Acquisition 395215436 Limited (“Acquisition”) and Westar International Corporation (“Westar”) consist of:

- (i) Application 501670 by Acquisition to invalidate trade mark 3180687 – **Cardland** – which is registered in class 35 in the name of Westar with effect from 17<sup>th</sup> August 2016, and;
- (ii) Opposition 409964 by Westar to trade mark application 3232605, which was filed by Acquisition on 21<sup>st</sup> May 2017, to register **Cardland** in classes 16 and 35.

2. The services covered by trade marks 3180687 and 3232605 are set out in Annex A. It is sufficient to note that they include retail services in class 35 relating to the sale of greetings cards and, in the case of 3232605, greetings cards as goods in class 16.

3. Westar opposes Acquisition’s application on the following grounds:

- (i) Trade mark 3232605 is identical to earlier trade mark 3180687 and covers identical or similar goods/services;
- (ii) There is a likelihood of confusion on the part of the public;
- (iii) Registration would therefore be contrary to s.5(1) or 5(2) of the Trade Marks Act 1994 (“the Act”);
- (iv) Greetings (International) Limited traded under Cardland between 2004 and 26<sup>th</sup> January 2017;
- (v) Westar was incorporated in the USA on 12<sup>th</sup> July 2016 as an IP holding company for the Cardland business;
- (vi) At the date of Acquisition’s application, Westar was the owner of goodwill generated in the UK under the sign Cardland by Greetings (International) Limited (now Acquisition);
- (vii) Acquisition’s use of the contested mark would have constituted a misrepresentation to the public which would have damaged Westar’s goodwill;

- (viii) Acquisition's use of the contested mark would, therefore, have amounted to passing off and registration of the contested mark would be contrary to s.5(4)(a) of the Act;
- (ix) On 1<sup>st</sup> October 2016, Rigel Kent Acquisitions Limited purchased the shares of Greetings (International) Limited, but the Share Purchase Agreement specifically excluded the goodwill and IP of the business, which remained the property of Westar;
- (x) Rigel Kent Acquisitions Limited was granted a non-exclusive licence to use Cardland to continue the business of Greetings (International) Limited, which it did for 5 months until the company went into liquidation in February 2017;
- (xi) Acquisition is attempting to usurp the terms of the terms of Share Purchase Agreement by seeking to register Cardland in its own name to benefit its creditors and former shareholder in the liquidation;
- (xii) The liquidated company cannot trade and it is highly unlikely that a third party would buy the registered mark since it does not hold any goodwill in the contested mark.
- (xiii) The application is a clear attempt to extort money from Westar, which continues to trade under the Cardland mark overseas through Cardland Overseas Limited;
- (xiv) This is consistent with Acquisition's continued demands for Westar to make financial settlement for the trade mark;
- (xv) Application 3232605 should therefore be refused under s.3(6) of the Act because the application was filed in bad faith.

4. Acquisition's grounds for invalidating trade mark 3180687 are as follows:

- (i) Under ss.47(2) and 5(4)(a) of the Act because Acquisition owned the goodwill generated under Cardland as a result of trading conducted between 2004 and 2017 and Westar's use of the mark would have amounted to passing off;
- (ii) Under ss.47(1) and 3(6) of the Act on the grounds that Westar's application to register Cardland was filed in bad faith.

5. With regard to the ground for invalidation based on a breach of s.5(4)(a) of the Act, I note that Acquisition's pleading is that:

*"For around 13 years the Cancellation Applicant has used and licensed the use of the CARDLAND mark (and domain name versions) in relation to, inter alia, services relating to greeting cards goods and generated goodwill and reputation in the United Kingdom, Ireland, Spain and online in relation to those goods and services.*

*Unlicensed use by a third party of the mark "CARDLAND" in relation to services relating to greeting cards goods will cause confusion and result in damage to the Cancellation Applicant, including damage to the goodwill and reputation in the CARDLAND brand."*

6. With regard to the ground for invalidation based on a breach of s.3(6) of the Act, I note that Acquisition's pleading is that:

*"As at the relevant date (date of application) (i) as a matter of legal right, the Cancellation Applicant was the owner of the CARDLAND mark in the UK (ii) the Owner had no bona fide intention to use the mark in the territory (iii) the Owner had knowledge of Cancellation Applicant's use in the UK (iv) the Owner had knowledge of Cancellation Applicant's use outside the UK (v) the application for registration by the Owner was in breach of fiduciary duties (vi) the application for registration preceded insolvency proceedings and unfairly and prejudicially alienated assets of the Cancellation Applicant; all of which fall short of the behaviour expected of a reasonable director in the applicant's position, and taken together, is contrary to law."*

7. Westar filed a counterstatement denying Acquisition's grounds for invalidation. This was essentially on the basis that Mr Jim McAllister, the controlling mind of Greetings (International) Limited and Cardland Overseas Limited, was entitled to the goodwill in the UK business conducted under Cardland, (ii) that he vested that goodwill in Westar (which he also controls), and (iii) the Share Purchase Agreement for the shares in Greetings (International) Limited expressly excluded the goodwill in the business, which was retained by Westar.

8. Acquisition filed a counterstatement admitting the aspects of Westar's opposition which coincide with its own invalidation case, namely that the marks at issue are identical, the goods/services at issue are also identical, or similar, and there is a likelihood of confusion on the part of the public. However, Acquisition denies that Westar is the owner of the goodwill under Cardland. It put Westar to proof that:

- (i) Westar is the owner of the goodwill;
- (ii) The Share Purchase Agreement expressly excluded the transfer of the goodwill in the Cardland business;
- (iii) The goodwill was reserved for Westar;
- (iv) Rigel Kent Acquisitions Limited was granted a non-exclusive licence to use Cardland after it bought the shares in Greetings (International) Limited.

#### **Application to amend Acquisition's case under ss.5(4)(a) and 3(6)**

9. Acquisition applied to amend its case for invalidating trade mark 3180687 under ss.5(4)(a) and 3(6) of the Act by adding the following to its existing grounds:

*"The dominus litis for Party B is a Mr James Wilson McAllister. He was a director of Party A until 01 October 2016. The petition for liquidation of Party A was presented on 08 March 2017 and granted on 18 March 2017. Under section 216 of the Insolvency Act 1986 Mr McAllister (having been a director of Party A within a 12 month period from the date it began to be liquidated) is prohibited from around 18 March 2017 until around 18 March 2022 in dealing with a prohibited name. Per section 216(2), "a name is a prohibited name in relation to such a person if (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company." It is uncontroversial that CARDLAND was the trading name of Party A. The prohibition therefore includes the mark CARDLAND. Contravention of the Insolvency Act makes Mr McAllister liable to imprisonment or a fine, or both."*

10. Westar opposed the amendment. Following a case management conference held on 31<sup>st</sup> August 2018, I refused the application for amendment. I gave my reasons as follows:

*“..... as Westar’s representative pointed out in writing in April 2018, the position between 18<sup>th</sup> March 2017 and 18 March 2022 is irrelevant to the grounds of invalidation [of trade mark 3180687] under s.3(6) and s.5(4)(a) because the relevant date for assessing both these grounds is the date of [Westar’s] application for registration, i.e. 17<sup>th</sup> August 2016. The amendment sought was therefore manifestly irrelevant.”*

## **Representation**

11. Westar is represented by Trade Mark Direct Limited. Acquisition is represented by Cloch Solicitors. Acquisition is in liquidation. Neither its trade mark application nor its application to invalidate Westar’s trade mark were filed in the name of the liquidators of Acquisition. However, Cloch, solicitors, says that the invalidation application was brought at the instance of the liquidators of Acquisition<sup>1</sup>. Neither side requested a hearing. I have, however, had the benefit of written submissions in lieu of a hearing.

## **The evidence**

12. Westar’s evidence consists of two witness statements by Mr Jim McAllister, the director of the company.

13. Acquisition’s evidence consists of two witness statements by Mr Philip Hannay of Cloch, solicitors.

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<sup>1</sup> See paragraph 4 of the written submissions dated 30<sup>th</sup> April 2019 filed on behalf of Acquisition.

## The facts

14. It is convenient to start by considering the facts which (a) matter, (b) are not disputed, and (c) are disputed. As regards (c), it is necessary to determine the correct factual position before moving on to apply the various grounds advanced by the parties for cancelling or refusing the other's trade mark registration/application.

### The non-contentious facts

15. Mr Jim McAllister developed the Cardland brand in 2004 and started trading in Scotland and Northern Ireland through his company JMC Wholesale Limited.

16. Mr McAllister was the sole director of the company.

17. The company changed its name to Greetings (International) Limited on 19<sup>th</sup> March 2014.

18. Mr McAllister held 50 of the 67 shares in the company. The other shares were held by a pension scheme called JMC Wholesale Retirement Benefits Scheme and The J W McAllister Trust, both of which appear to have existed for the benefit of Mr McAllister.

19. The company traded as Cardland. It sold greetings cards and gifts through its own stores. Between 2007 and (at least) 27<sup>th</sup> July 2016, the company had a website located at card-land.co.uk<sup>2</sup> and another at simplycardland.co.uk<sup>3</sup>. However, there is no evidence that goods were sold online.

20. The Cardland business was a sizeable business<sup>4</sup>. Greetings (International) Limited's accounts for the year ending 30<sup>th</sup> April 2016 show it as having over £1m in net assets<sup>5</sup>. However, by this time it was loss making.

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<sup>2</sup> See exhibit ACQ-17 to Hannay 1

<sup>3</sup> See exhibit ACQ-18 to Hannay 1

<sup>4</sup> According to a page on the website simplybycardland.co.uk, in Spring 2016 the company had over 30 permanent stores over 5 countries with 2 million customers and 200 staff. See exhibit ACQ-19 to Hannay 1

21. Westar International Corporation was incorporated in the State of Wyoming, USA, on 12<sup>th</sup> July 2016. Mr Jim McAllister and Murial McVay were the initial directors of the company. The shares were held by the Oakmont Trust, the beneficiaries of which were Mr Gerald McAllister (Mr Jim McAllister's brother) and Ms McVay (his then fiancé).

22. Greetings (International) Limited changed its name to Acquisition 395215436 Limited on 11<sup>th</sup> January 2017 and went into liquidation on 20<sup>th</sup> February 2017. The company has not traded since.

23. Cardland Overseas Limited bought the stock, fixtures and fittings of Greetings (International) Limited from the company's liquidators on 28<sup>th</sup> March 2017 for £12k plus VAT. This transaction did not include any goodwill in the business.

24. Westar itself has never traded under the mark Cardland.

### **Disputed facts**

*Who owned the goodwill in Cardland prior to the date that Westar was incorporated on 12<sup>th</sup> July 2016?*

25. Mr McAllister's evidence is that as the sole director and (in effect) shareholder of Greetings (International) Limited, he "*primarily*" owned the goodwill in the business. In support of this claim he points out that, as sole director, he was responsible for negotiating contracts, business and trading relationships, and developing the company's customer base.

26. It is submitted on behalf of Acquisition that:

- (a) In the absence of any agreement to the contrary, ownership of goodwill is a question of fact: who do the public consider is responsible for the trade?

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<sup>5</sup> See exhibit ACQ-13 to Hannay 1



- (b) The Cardland business was conducted publicly by Greetings (International) Limited.
- (c) There exists a “corporate veil” between a company and its owners. The property of the company is therefore its own, and not that of the shareholders or directors.

27. In support of the third point above, Acquisition draws my attention to the judgment of the Supreme Court in *Prest v Petrodel Resources Ltd and Others*<sup>6</sup> in which Lord Sumption noted that:

*“8 Subject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders. It has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders. In Salomon v A Salomon and Co Ltd [1897] AC 22, the House of Lords held that these principles applied as much to a company that was wholly owned and controlled by one man as to any other company.”*

28. I find that Acquisition is correct to point to the distinction between the property of Greetings (International) Limited and that of Mr McAllister. It is clear on the authorities that simply being the sole director and (in effect) sole shareholder provides no basis in law for treating the company’s property as personal property.

29. There are some exceptions to this rule, the most potentially relevant one being that a company may, in some circumstances, be treated as holding property on trust for its owners. No such case is expressly pleaded or advanced by Westar. Rather, Westar’s argument appears to be based solely on Mr McAllister’s position as sole director and (in effect) sole shareholder in the company. In any event, there is nothing about the relationship between Mr McAllister and Greetings (International) Limited which indicates that the company generally held its property on trust for Mr McAllister. If that had been the case Mr McAllister’s other company - Cardland

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<sup>6</sup> [2013] UKSC 34

Overseas Limited – would not have had to purchase the stock of Greetings (International) Limited (i.e. its physical property) from the liquidators of the company.

*Who owned the goodwill in Cardland at the date of Westar's application to register Cardland on 17<sup>th</sup> August 2016?*

30. Mr McAllister's evidence is that Cardland's success was short lived. Increased competition saw the business's sales decline by up to 45% year on year. This was "unsustainable". The business could only keep stores open if it could squeeze landlords for reduced rents. Therefore, many of its stores closed prior to 17<sup>th</sup> August 2016.

31. According to Mr McAllister, Westar was set up in July 2016 to hold the goodwill and IP rights in the various Cardland companies. He says that as sole director of the companies he could decide to hold the goodwill in a corporate vehicle of his choosing, namely Westar. This argument is based on Mr McAllister's understanding as to who owned the goodwill in the business prior to July 2016. If I am right, it was the property of the company, not his personal property. It follows that it was not open to him to vest it in Westar as though it was his personal property. It would have been open to Greetings (International) Limited to assign its business and goodwill to Westar, but there is no evidence that it did.

32. I therefore find that Greetings (International) Limited was the owner of the goodwill established in the UK under Cardland as at 17<sup>th</sup> August 2016.

*Was the Share Purchase Agreement of 1<sup>st</sup> October 2016 valid and what was its effect?*

33. The Share Purchase Agreement of 1<sup>st</sup> October 2016 was between Mr McAllister, J W McAllister Trust and JMC Wholesale Retirement as sellers of the shares in Greetings (International) limited, and Rigil Kent Acquisitions Limited as the buyer. The agreement was subject to satisfactory completion and payment of £67<sup>7</sup>.

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<sup>7</sup> See clause 4

34. Acquisition's representative makes a number of criticisms of this document, the most relevant of which are (i) that it was signed by Mr McAllister on behalf of Greetings (International) Limited, but the company obviously did not own its own shares, and (ii) it purports to be a Share Purchase Agreement but in fact covers the transfer of the business and assets of Greetings (International) Limited to its new owner. I see no substance in the first point. The agreement was signed by Mr McAllister who owned the majority of the shares in the company. Further, all the indications are that he would have been able to sign for J W McAllister Trust and JMC Wholesale Retirement too. It is clear what was intended. Therefore, the fact that Mr McAllister purported to sign on behalf of Greetings (International) Limited rather than on behalf of its shareholders was an error of form, not one of substance. As to the second point, the mismatch between the title of the agreement and its coverage is again a matter of form rather than substance. It does not undermine the terms of the agreement, one of the purposes of which was to make it clear that the goodwill in the Cardland business had not been sold to the new owners of Greetings (International) limited.

35. It is true that there is no specific evidence that the agreement was fully completed. However, both the sellers and the buyers acted as though it was and there is no evidence that it was not. I therefore accept that the agreement was effective as between the sellers and the buyers.

*Did the Share Purchase Agreement confer ownership of the goodwill under Cardland on Westar?*

36. The Share Purchase Agreement did not purport to assign or transfer the goodwill in the Cardland business from Greetings (International) Limited to Westar. It contained a clause through which Rigil Kent Acquisitions Limited *acknowledged* that Westar owned trade mark 3180687 and any goodwill that existed under Cardland. That could have a bearing on whether it is open to Rigil Kent Acquisitions Limited and/or a successor or privy to dispute that *Westar* owned the goodwill in the Cardland business at the date of the agreement. However, the agreement did not transfer the ownership of the goodwill from Greetings (International) Limited to

Westar, still less transfer ownership of the goodwill prior to 17<sup>th</sup> August 2016 (when Westar's application to register Cardland was filed). Indeed, this is not Westar's case, according to which the agreement "*retained*" Westar's ownership of the goodwill.

*Did Mr McAllister give Greetings (International) Limited an implied licence to use Cardland after 12<sup>th</sup> July 2016 (when Westar was established)?*

37. It follows from my finding that Greetings (International) Limited owned the goodwill in the Cardland business conducted in the UK up until (at least) 17<sup>th</sup> August 2016, and that it did not need a licence from Mr McAllister or Westar to use Cardland prior to 1<sup>st</sup> October 2016.

*Did Westar give Greetings (International) Limited a licence to use Cardland after 1<sup>st</sup> October 2016 when the shares in Greetings (International) Limited were sold to Rigil Kent Acquisitions Limited?*

38. Clause 2.3 of the Share Sale Agreement purported to grant a licence from Westar to the buyers, i.e. Rigil Kent Acquisitions Limited, to use trade mark 3180687 on a non-exclusive and non-transferable licence basis.

39. There are several difficulties with this clause, not least that neither Westar nor Greetings (International) Limited were parties to the agreement. Mr McAllister was (and is) a director of Westar and could act on its behalf. The intention of the parties to the agreement was clearly to permit the new owners of Greetings (International) Limited to continue to use Cardland after the share sale. Therefore, if it had been necessary, I would have been prepared to regard this as consent from Westar for Greetings (International) Limited to continue to use the mark. However, according to clause 2.4 of the agreement any such consent automatically terminated if Greetings (International) Limited went into liquidation, which it did prior to Acquisition's application to register Cardland. Consequently, so far as the present proceedings are concerned, nothing appears to turn on whether there was an effective licence between 1<sup>st</sup> October 2016 and the date Acquisition went into liquidation.

*Did Westar own any goodwill that survived the closure of the Cardland business at the time of Acquisition's application to register Cardland?*

40. According to Mr McAllister, he struggled to find investors for the Cardland business because no investor would see any value or goodwill to the business's retail store arrangement, which for a large majority of stores depended on temporary 'overholding' arrangements with landlords.

41. Mr McAllister says that:

*"If the stores closed, any goodwill associated with them would diminished (sic) on closure. The brand CARDLAND never traded online at any time and was a bricks and mortar operation only..... As we did not sell goods online, the actual location of the stores was paramount. Past goodwill is only as good as future goodwill in this type of retail, namely a small card shop chain that basically struggled to survive without reduced occupational costs.*

*As time progressed my bank funding was withdrawn as I was residing overseas and the banks did not provide lending to overseas directors. On several occasions I tried to find new investors to no avail. I tried to sell the stores to larger industry operators but they could not see value or goodwill in a brand that only had month to month occupational agreements in place as past goodwill in retail, and in particular Cardland's case, was really only as good as its future ability to trade from the locations."*

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*"Rigil Kent failed to find a buyer as a going concern or to rescue Greetings (International) Ltd and it is my knowledge that Greetings International Ltd was then placed into formal liquidation by its new owners and Directors, rendering any remaining goodwill worthless."*

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*"On 21 May 2017, Acquisition 395215436 Limited applied to register the mark CARDLAND at the UK IPO. However, this application should not be granted since at that date, an identical mark was already registered in the name of Westar International and, all past goodwill In the CARDLAND mark was*

*Held by Westar International and myself. There would be no residual goodwill in the CARDLAND name since all stores had closed and there had been no further trading since the liquidation and hardly any trade after the transfer to Rigil Kent Acquisitions Ltd.”*

42. In his statement in reply to Mr McAllister’s first statement, Mr Hannay filed a copy of a charge document dated 30<sup>th</sup> November 2016<sup>8</sup>. This is a debenture granted by Greetings (International) Ltd in favour of Cardland Overseas Limited through which the assets of the former were used to guarantee monies owed to the latter. Mr Hannay points out that the assets are listed as including “*all present and future goodwill of the Company.*” In his evidence in reply, Mr McAllister explains that this security was required to cover outstanding lease payments to Shire Leasing. He says that he continues to pay this debt personally. Mr McAllister also points out that the liquidators of Acquisition were aware of this security and yet it did not stop them selling the physical assets of the company to him (or, more accurately, Cardland Overseas Limited). Consequently, Mr McAllister disputes that the terms of the debenture show that there was still goodwill in the Cardland business which is now owned by Acquisition.

43. I accept that the terms of the debenture do not show that residual goodwill existed on 21<sup>st</sup> May 2017 when Acquisition’s trade mark application was filed. The Cardland business may have been trading at the date of the debenture in November 2016 (albeit the business was on its last legs) but had ceased trading by February 2017, at least 3 months prior to the date of Acquisition’s application. Therefore, the terms of the debenture do not contradict Mr McAllister’s claim that the goodwill in the Cardland business was worthless once Acquisition stopped trading. Secondly, the debenture is framed in generic terms intended to cover all the possible assets of the company, hence the reference to “*all present and future goodwill....*”. This does not necessarily mean that there was any goodwill at the date of the debenture, let alone that there would be any future goodwill.

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<sup>8</sup> See exhibit AQU-22 to Hannay 2

44. As noted above, Mr McAllister's evidence is that there would be no residual goodwill following the closure of the UK Cardland business<sup>9</sup>. I note that his evidence on this point makes a possible distinction between "*past*" goodwill, which he claims is owned by Westar or him, and "*residual*" goodwill, which he denies exists. Once a business closes any goodwill that existed in the 'past' is irrelevant. This is because past goodwill is not a property right. By contrast, the continuing residual goodwill of a defunct business may be a property right and, unless abandoned, may continue to be protected by the law of passing off until sufficiently diminished by the passage of time.

45. I have carefully considered whether Mr McAllister's evidence that no residual goodwill survived the closure of the Cardland business should be understood as applying only to any goodwill generated after the business changed hands in October 2016. I have concluded that this would not be fair reading of Mr McAllister's evidence for two reasons. Firstly, his evidence is that any goodwill generated after the Share Purchase Agreement was under licence and belonged to Westar (or him personally), as did the goodwill generated by earlier trading under Cardland. On that view of the matter, there would be no reason for him to distinguish between the goodwill generated prior to the change of ownership and any goodwill generated by subsequent trading. Secondly, the overall thrust of Mr McAllister's evidence is that the closure of the Cardland stores rendered any goodwill in the Cardland business "*worthless*." The reason given for this assessment, i.e. that the actual location of the Cardland stores was paramount and past goodwill was only as good as future goodwill in the type of retail at issue, apply as much to the goodwill generated prior to the change of ownership as to any goodwill generated after the sale of the company.

46. It follows that even if Mr McAllister intended to distinguish between the fatal consequences of the closure of the Cardland stores on any residual goodwill generated by trading after the sale of Cardland (International) Limited, and "*past*" goodwill generated from earlier trading under Cardland (prior to the sale of the company), there is no rational basis for him to do so.

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<sup>9</sup> See Mr McAllister's evidence re-produced at paragraph 41 above.

47. Mr McAllister's position on the non-existence of "residual goodwill" is important. This is because Westar relies on the continued existence of goodwill as at 21<sup>st</sup> May 2017 (i.e. after the closure of the business) to support its opposition to Acquisition's trade mark application. By contrast, Acquisition's case for invalidating Westar's trade mark depends on the existence of goodwill under Cardland as at 17<sup>th</sup> August 2016. The Cardland business was an on-going business at that date, albeit a loss making one in terminal decline. It is self-evident that a loss-making business retains the goodwill of (at least) its remaining customers.

48. I conclude that in the light of Mr McAllister's evidence I cannot accept Westar's case that it owned a protectable goodwill under Cardland at the date of Acquisition's application in May 2017.

*Could Acquisition claim to own any goodwill that survived the closure of the Cardland business at the time of its application to register Cardland?*

49. The terms of the Share Purchase Agreement dated 1<sup>st</sup> October 2016 would probably have prevented Rigil Kent Acquisitions Limited - the buyer of the shares in Greetings (International) Limited (now Acquisition) - from asserting ownership of the goodwill in the Cardland business. As Lord Justice Moore-Bick stated in *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd*<sup>10</sup>:

*"There is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis for the transaction, whether it be the case or not. For example, it may be desirable to settle a disagreement as to an existing state of affairs in order to establish a clear basis for the contract itself and its subsequent performance. Where parties express an agreement of that kind in a contractual document neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerns those aspects of their relationship to which the agreement was directed. The contract itself gives rise to an estoppel: see*

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<sup>10</sup> [2006] EWCA Civ 386



*Colchester Borough Council v Smith [1991] Ch. 448, affirmed on appeal [1992] Ch 421.*”

The distinction between the company’s new owner and the company under new ownership is, in this context, a meaningless one. This is because the company would clearly be acting as a privy for its new owner. I therefore find that the terms of the Share Purchase Agreement probably prevented Acquisition from claiming to be the owner of any goodwill in the Cardland business. I see no reason why the liquidators of the company would be in a better position to lay claim to the property than the company itself. Acquisition’s representative submits that the liquidators have power under the Insolvency Act 1986 to undo previous company transactions. This may be so, but until such powers are exercised the terms of those transactions must surely stand.

50. Mr Hannay provides no evidence that Greetings (International) Limited traded under Cardland after the date of the Share Purchase Agreement. Mr McAllister’s evidence is that there was “*hardly any trade after the transfer to Rigil Kent Acquisitions Ltd.*” Consequently, as things stand, Acquisition is not able to lay claim to the ownership of goodwill under Cardland at the date of its application to register the mark.

**Acquisition’s claim that the registration of Westar’s trade mark 3180687 was contrary to s.5(4)(a) of the Act**

51. Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

52. In *Discount Outlet v Feel Good UK*<sup>11</sup>, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

*“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.*

*56. In relation to deception, the court must assess whether “a substantial number” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per Interflora Inc v Marks and Spencer Plc [2012] EWCA Civ 1501, [2013] FSR 21).”*

53. Acquisition claims that as at 17<sup>th</sup> August 2016, Greetings (International) Limited (as it was then called) had acquired a valuable goodwill under Cardland in relation to:

Retail services connected with the sale of cards, greetings cards, printed matter, photographs, stationery, plastic materials for packaging (not included in other classes), wrapping paper, gift wrap, gift tags, printed invitations, gift bags, gift boxes, adhesive tapes, adhesive stickers, bows for decorating packaging, bows (decorative) for wrapping, paper and cardboard, paper ribbons, ribbons for gift wrapping, ribbons, novelty buttons [badges] for wear, badges for wear, not of precious metal, tissue paper, card holders in the

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<sup>11</sup> [2017] EWHC 1400 IPEC

nature of display boards, envelopes, party stationery, bunting, banners, party streamers, paper badges, paper party bunting and banners, candles, candles for use in the decoration of cakes, cake decorations, certificates, calendars, diaries, memo pads, wallets of paper or card for holding money, pens and pencils, containers for pens and pencils, artists' materials, paint brushes, framed photographs, framed poetry, framed pictures, holders for photographs (other than frames), albums for photographs, latex and foil balloons either inflated with the use of helium gas or not, photograph and picture frames, soft toys, plush toys, plastic keys, plastic horseshoes [toys, games and playthings], confetti, table confetti, confectionery, toiletries and parts and fittings for all the aforesaid goods; information and advice in relation to the aforesaid services.

54. There is no dispute that the Cardland business covered “*retail services connected with the sale of cards, greetings cards*” as well as gifts. I find that “*gifts*” is an imprecise description of goods. There is not enough evidence to find that the Cardland business included retail services relating to other specific goods, such as, for example, “*paint brushes.*”

55. So far as retailing of cards is concerned, it is obvious that if Greetings (International) Limited owned the goodwill in the Cardland business as at 17<sup>th</sup> August 2016 (as I have found) that use of the same mark in relation to the same services or closely connected goods, i.e. greetings cards, would have amounted to a misrepresentation to the public. It is also clear that such a misrepresentation would have been liable to damage the goodwill in the Cardland business through diversion of sales and/or loss of control over the name of the business. Consequently, such use of Cardland by a third party would have amounted to passing off, unless it was made with the consent of the owner of the goodwill.

56. Mr McAllister’s position is that he “*primarily*” owned the goodwill in the Cardland business and he decided to register the mark in the name of Westar. However, I have found that Greetings (International) Limited was in fact the legal owner of the goodwill in the Cardland business at the relevant date. In these circumstances, it is necessary to consider the significance of Mr McAllister’s role as the sole Director of,

and controlling mind behind, Greetings (International) Limited, and that he made the application to register trade mark 3180687 in the name of Westar. In this connection, Westar points out that article 5(c) of the Articles of Association of Greetings (International) Limited authorise the sole director of the company to exercise all the powers of the company deemed to be vested in the Board of Directors.

57. Section 5(4)(a) is subject to s.5(5) of the Act in this respect. The latter states that:

*“Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration.”*

58. It has been pointed out on behalf of Acquisition, that Mr McAllister has not provided a copy of any of the legal decisions he took as the sole director of Greetings (International) Limited. This is true. However, in circumstances where (1) Mr McAllister was the sole director of, and controlling mind, behind Greetings (International) Limited, and (2) he took a conscious decision to register his company’s trade mark in the name of Westar, it seems to me that it would be artificial and unreal to overlook Mr McAllister’s role in the matter. Although it did not transfer ownership of the company’s goodwill, his action means that Greetings (International) Limited impliedly consented to the registration of the mark by Westar. It follows that s.5(5) of the Act applies and prevents Acquisition’s case from succeeding under s.5(4)(a). I reject it accordingly.

**Acquisition’s claim that the registration of Westar’s trade mark 3180687 was contrary to s.3(6) of the Act**

59. Section 3(6) of the Act states:

*“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”*

60. Section 47 of the Act states:

*“47. - (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).”*

61. Acquisition’s claim that trade mark application 3180687 was filed in bad faith is based on the six pleadings re-produced in paragraph 6 above. Two of these are based on Westar’s knowledge of Greetings (International) Limited’s use of the mark in and outside the UK. In *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation*<sup>12</sup> Professor Ruth Annand as the Appointed Person held that:

“22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application.”

The person behind Westar’s application was Mr McAllister. It is therefore necessary to consider his state of knowledge at the time of the application and his motives for filing the application in the name of Westar.

62. Mr McAllister plainly knew that Greetings (International) Limited was using the Cardland mark at the time in the UK.

63. Acquisition further contends that *“as a matter of legal right, the Cancellation Applicant was the owner of the CARDLAND mark in the UK.”* Based on my findings above, this is true. Acquisition seeks to build on this by adding that *“[Westar] had no bona fide intention to use the mark in the territory.”* This is probably also true. However, it is not necessary for a trade mark to be used by the proprietor of the mark. It is sufficient if the mark is used, or proposed to be used, by another party with the proprietor’s consent, e.g. a licensee<sup>13</sup>. Mr McAllister’s evidence is that the mark was being used by Greetings (International) Limited and that he intended this use to continue with Westar’s consent. I accept his evidence on this point. It follows

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<sup>12</sup> BL O-013-05

<sup>13</sup> See s.32(3) of the Act

that no adverse findings can be drawn from the mere fact that there was no intention for Westar to use the mark itself.

64. Turning to Mr McAllister's motives for filing the application, Acquisition claims that "*the application for registration by [Westar] was in breach of [Mr McAllister's] fiduciary duties.*" There is a related pleading that "*the application for registration preceded insolvency proceedings and unfairly and prejudicially alienated assets of the Cancellation Applicant*". These claims lead Acquisition to conclude that Mr McAllister's decision to file the application in the name of Westar fell "*short of the behaviour expected of a reasonable director in [his] position*" and amounted to an act of bad faith. The choice of words harks back to the finding of the High Court in *Gromax Plastics Ltd v Don & Low Nonwovens Ltd*<sup>14</sup> that bad faith includes not only dishonesty, but also "*some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined.*"

65. There is no doubt that a director owes a fiduciary duty to his or her company. This means that he or she must act in the best interests of the company. In the event of insolvency, this duty transfers to the company's creditors. Therefore, a director who strips his or her company of its IP assets, including its trade mark, to keep those assets from the reach of an impending liquidation, would usually be acting in breach of his or her fiduciary duty to the company and its creditors. Such action would fall below the standard of behaviour observed by reasonable and experienced men (and women). It follows that, to the extent that an application by a director to register a company's trade mark in the name of a third-party accords with IP asset stripping prior to foreseeable liquidation, such an application would have been filed in bad faith.

66. I find support for this analysis in s.60 of the Act, which provides grounds for refusal or invalidation of trade marks applied for by an agent or representative of a

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<sup>14</sup> [1999] RPC 367 at 379

foreign principal. In dealing with an equivalent claim under Article 8(3) of EU Trade Mark regulation 2017/1001<sup>15</sup>, the General Court found that:

*“It is sufficient for the purposes of Article 8(3) of [EU Trade Mark] Regulation 2017/1001 that there be some agreement of commercial cooperation between the parties of a kind that gives rise to a fiduciary relationship by imposing on the trade mark applicant — whether expressly or implicitly — a general duty of trust and loyalty as regards the interests of the trade mark proprietor.”*

67. If the fiduciary duty imposed on an agent or representative of a foreign principal justifies the refusal or cancellation of a trade mark acquired in breach of that duty, then a director who breaches the much more obvious fiduciary duty owed to his or her own company is even more liable to be acting in breach of trust, and therefore in bad faith.

68. On Mr McAllister’s evidence, I am in no doubt that he knew that Greetings (International) Limited was heading towards liquidation when he filed the contested trade mark application on 17<sup>th</sup> August 2016. He says that most of the company’s stores had already closed by this date. And given the company’s store rental commitments, the rapid loss of sales made things “*unsustainable*”. It is true that he sold his shares in the business to a new owner to continue the business. However, it is clear from his evidence that there was no realistic prospect of the business continuing for long under new ownership or otherwise. Considered objectively, the trade mark application therefore appears to have been part and parcel of Mr McAllister’s decision to divest Greetings (International) Limited of its goodwill and IP rights prior to liquidation. It is true that the trade mark and the goodwill are separate legal assets. However, securing the Cardland trade mark in the name of Westar would plainly have made it very difficult for anyone else to realise the UK-based goodwill in the Cardland business. The trade mark application was therefore a tool to retain the benefit of the goodwill in the business.

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<sup>15</sup> Both the national provision and the equivalent EU law are based on Article 6septies of the Paris Convention

69. Mr McAllister says in his first witness statement that he applied to register Cardland in the name of Westar “*since this company was managing all my trade in the UK, Europe and internationally under the Cardland mark.*” However, as Mr Hannay pointed out in his second witness statement dated 31<sup>st</sup> January 2019, there is no evidence that Westar was, as a matter of commercial reality, ‘managing’ the Cardland business. Mr McAllister did not correct this omission in his second subsequent witness statement of 29<sup>th</sup> March 2019. I do not, therefore, accept that there was a legitimate commercial reason for registering Cardland in the name of Westar. It was simply an act borne of Mr McAllister’s mistaken belief that he was entitled to do what he liked with the IP assets of the company because, in effect, he owned the company.

70. I acknowledge that Mr McAllister may have felt entitled to retain the company’s IP because he (1) had worked to build up the goodwill in the company, (2) says that he is still paying off some of the company’s debts to creditors secured against personal guarantees he gave to keep the company going, and (3) claims that the goodwill in the business was virtually worthless.

71. Points (1) and (2) do not counter the complaint that in registering the Cardland trade mark in the name of Westar he acted against his fiduciary duty to Greetings (International) Limited. As to point (3), Mr McAllister’s negative assessment of the value of the company’s goodwill does not justify his action because it effectively prevented the liquidators, once appointed, from even trying to realise the value of the goodwill.

72. Taking all the above into account, I find that trade mark application 3180687 was filed in bad faith. I therefore declare the resulting registration invalid.

### **Westar’s opposition to Acquisition’s trade mark 3232605 under ss.5(1) or 5(2) of the Act**

73. The consequence of my finding that trade mark 3180687 is invalid is that it is deemed never to have existed. Consequently, there is no longer an earlier trade mark upon which Westar can base its opposition under ss.5(1) or (2) of the Act.



### **Westar's opposition to Acquisition's trade mark 3232605 under s.5(4)(a) of the Act**

74. Mr McAllister denies that any residual goodwill under Cardland survived the closure of the business in late 2016/early 2017. If that is right it applies to all past goodwill. Consequently, there is no basis for Westar's claim to have owned an actionable goodwill (and therefore an earlier right to the mark) at the date of Acquisition's trade mark application on 21<sup>st</sup> May 2017. Westar's opposition under s.5(4)(a) is therefore rejected.

### **Westar's opposition to Acquisition's trade mark 3232605 under s.3(6) of the Act**

75. Westar's case under s.3(6) of the Act is that by seeking to register Cardland in its own name Acquisition is attempting to usurp the terms of the terms of the Share Purchase Agreement. In this connection, Westar points out that a company in liquidation cannot trade and it is highly unlikely that a third party would buy trade mark 3232605. This is because Acquisition does not own goodwill under the Cardland mark. By contrast, Westar continues to trade under Cardland overseas through the company Cardland Overseas Limited. According to Westar, the real purpose of Acquisition's trade mark application is to "extort" money from Westar for the Cardland mark.

76. In *Lindt v Hauswirth*<sup>16</sup> the CJEU stated that:

"41. ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the

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<sup>16</sup> Case C- 529/07

relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 48)."

77. As noted above, the Share Purchase Agreement of 1<sup>st</sup> October 2016 contained a clause through which Rigil Kent Acquisitions Limited acknowledged that Westar retained ownership of trade mark 3180687, as well as any goodwill that existed under Cardland. As Rigil Kent Acquisitions Limited appears to have been the sole shareholder in Acquisition at the date of the liquidation, it is reasonable to infer that the terms of this agreement must have been known to the company on 21<sup>st</sup> May 2017. I note that Acquisition has filed no evidence from anyone in the company with direct knowledge of the matter, or the liquidators, which casts doubt on the correctness of this inference. I therefore find accordingly.

78. The fact that Acquisition was in liquidation at the date of its trade mark application is *prima facie* evidence that it was not trading under the mark. And in these circumstances, it is difficult to see how it could have had an intention to resume trading as Cardland. Nor is there any evidence from Acquisition that it intended someone else to use Cardland with its consent. Therefore, taking all the

relevant facts into account, I find that, at the relevant date, Acquisition had no intention to use Cardland as a trade mark.

79. It is clear that Acquisition considers that Mr McAllister was wrong to have deprived the company of its goodwill prior to it going into liquidation and registered the Cardland trade mark in the name of Westar. The invalidation application was clearly intended to reverse Westar's registration of the Cardland trade mark in bad faith. This was a legitimate objective.

80. The purpose of Acquisition's trade mark application was plainly to acquire ownership of the Cardland trade mark in the UK. I find that, on the balance of probability, the purpose of this was to exert pressure on Westar/Mr McAllister as a party having a known and continuing interest in the Cardland mark. The intention was to force Westar/Mr McAllister to make reparations for depriving the company of the goodwill in the Cardland business or to accept that, despite the terms of the Share Purchase Agreement, any remaining goodwill in the business belonged to Acquisition.

81. In my view, this was an illegitimate objective. The trade mark registration system exists to protect trade marks that are being, or are intended to be, used in the course of trade in accordance with their essential function, which is to distinguish the goods/services of a particular undertaking. Registering a trade mark without an intention to use it, purely to gain a tactical advantage in an insolvency dispute, is an abuse of the system. This would be viewed as unacceptable commercial behaviour by "*reasonable and experienced men in the particular area being examined.*" I therefore find that trade mark application 32332605 was filed in bad faith contrary to s.3(6) of the Act. Consequently, the application is refused.

### **Overall outcome**

82. Acquisition's application to invalidate trade mark 3180687 succeeds in full.

83. Westar's opposition to Acquisition's application also succeeds in full.

## Costs

84. It is submitted on behalf of Acquisition that the manner in which these proceedings have been conducted by Westar has caused it to incur substantial sums in costs. Acquisition therefore says that it will make an application for an order requiring Westar to pay it substantial 'off-the-scale' costs regardless of the outcome of these proceedings. On the other hand, Acquisition submits that the outcome of these applications will affect the argument on costs. It therefore proposes that the question of costs be the subject of further written submissions or a hearing by telephone.

85. It is submitted on behalf of Westar that Acquisition should be ordered to pay its costs, including costs above the usual scale. No reason is given for requesting off-scale costs.

86. It is well established that the registrar operates on a published scale of costs. The scale is set out in Tribunal Practice Notice 2/2016. The general circumstances in which the registrar might award higher costs is set out in paragraph 5 of Tribunal Practice Notice 5/2007 as follows:

*“TPN 2/2000 recognises that it is vital that the Comptroller has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour. Whilst TPN 2/2000 provides some examples of unreasonable behaviour, which could lead to an off scale award of costs, it acknowledges that it would be impossible to indicate all the circumstances in which a Hearing Officer could or should depart from the published scale of costs. The overriding factor was and remains that the Hearing Officer should act judicially in all the facts of a case. It is worth clarifying that just because a party has lost, this in itself is not indicative of unreasonable behaviour.”*

87. Rule 67 of the Trade Mark Rules 2008 provides the legal basis for the registrar to order a party to pay costs to another party in proceedings. The Rule affords a discretion which can be used to depart from scale costs and award costs on a

compensatory basis where justified. It is for the parties to justify a different approach to costs. The registrar will usually only depart from scale costs because of unreasonable behaviour where “...*the conduct of the* [party about which the complaint is made] *constituted such exceptional circumstances that a standard award of costs would be unreasonable*<sup>17</sup>.”

88. Westar has not attempted to justify its request for off-scale costs.

89. Acquisition complains in broad terms about the manner in which Westar has conducted these proceedings, but it provides no details to illustrate what it means by this. Whilst indicating that it intends to pursue its application for off-scale costs regardless of my decision, Acquisition asks for permission to particularise its case for off-scale costs after seeing my decision on the substance.

90. Given that both parties have achieved a roughly equal measure of success, I am provisionally minded to direct that the parties bear their own costs, subject to Acquisition paying Westar a contribution towards the cost of Acquisition’s unsuccessful application to amend its s.3(6) pleadings. I will allow the parties 14 days to indicate in writing why they wish to make further submissions on costs. If they do, I will issue directions for a hearing by telephone.

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<sup>17</sup> *Rizla Ltd’s Application* [1993] RPC 365 at 377

### **Status of these decisions**

91. My decisions on the substantive issues are final. The period for appeal shall start from the date below.

92. My decision on costs is provisional. I will issue a final decision on costs in due course. The period for any appeal on costs shall start from the date of my final decision.

**Dated 5 August 2019**

**Allan James**  
**For the Registrar**

## Annex A

The services covered by trade mark 3180687 are:

“Class 35: Retail services connected with the sale of cards, greetings cards, printed matter, photographs, stationery, plastic materials for packaging (not included in other classes), wrapping paper, gift wrap, gift tags, printed invitations, gift bags, gift boxes, adhesive tapes, adhesive stickers, bows for decorating packaging, bows (decorative) for wrapping, paper and cardboard, paper ribbons, ribbons for gift wrapping, ribbons, novelty buttons [badges] for wear, badges for wear, not of precious metal, tissue paper, card holders in the nature of display boards, envelopes, party stationery, bunting, banners, party streamers, paper badges, paper party bunting and banners, candles, candles for use in the decoration of cakes, cake decorations, certificates, calendars, diaries, memo pads, wallets of paper or card for holding money, pens and pencils, containers for pens and pencils, artists' materials, paint brushes, framed photographs, framed poetry, framed pictures, holders for photographs (other than frames), albums for photographs, latex and foil balloons either inflated with the use of helium gas or not, photograph and picture frames, soft toys, plush toys, plastic keys, plastic horseshoes [toys, games and playthings], confetti, table confetti, confectionery, toiletries and parts and fittings for all the aforesaid goods; information and advice in relation to the aforesaid services.”

3. The goods/services covered by trade mark 3232605 are:

“Class 16: Paper, cardboard; printed matter; stationery; greeting cards; books; notebooks; calendars; post cards; tour and sightseeing books ; maps; diagrams; graphic images; announcement cards; book markers; labels, not of textile; posters; instructional and teaching materials; address books; manuscript books; pocket memorandum books; activity books; ledger books; log books; guide books; account books; copy books; pocket books [stationery]; signature books; binding materials for books and papers; ledgers [books]; note books; writing or drawing books; books; wrapping paper; photograph albums; printed matter sealed in plastic or laminated, including calendars, tables, identity cards and passports; plastic film for wrapping; photographs and graphic reproductions; postcards; prospectuses; bookbinding material; plastic materials for packaging, included in class 16; stationery; greetings cards; cards; anniversary cards; announcement cards; birthday cards; blank cards; congratulatory cards; illustrated cards; wedding cards; framed gift cards; invitation cards; invitations; pads of invitations; card holders; gift wrap; gift wrapping paper; decorative wrapping paper; gift tags; gift bags; gift boxes; adhesive tapes; adhesive stickers; articles of cardboard for wrapping and packaging; articles of paper for wrapping and packaging;

articles of plastic for wrapping and packaging; bows for decorating packaging; bows (decorative) for wrapping; paper ribbons; tissue paper; envelopes; party stationery; tubes (cardboard); banners of cardboard; banners of paper; display banners of paper; display banners of cardboard; certificates; calendars; diaries; leather covered diaries; memo pads; wallets of paper or card for holding money; pens; roller ball pens; ballpoint pens; pencils; coloured pencils; coloured pens; containers for pencils; containers for pens; art materials; articles for drawing; articles for use in writing; framed photographs; framed poetry; framed pictures; holders for photographs (other than frames); albums for photographs; parts and fittings for all the aforesaid goods.

Class 35: Business administration; business management for others; providing of commercial know-how (franchising); branding services; office functions; advertising; marketing; presentation of companies on the Internet and other media; direct mail advertising; retail, retail store, mail-order and on-line retail services connected to the sale of a variety of trophies made of common metals and their alloys, money boxes of metal, key rings of common metals, figurines of common metals, ornaments of common metals, key rings of precious metals, articles of jewellery, watches, clocks, stationery, greetings cards, cards, anniversary cards, announcement cards, birthday cards, blank cards, congratulatory cards, illustrated cards, wedding cards, framed gift cards, invitation cards, invitations, pads of invitations, card holders, gift wrap, gift wrapping paper, decorative wrapping paper, gift tags, gift bags, gift boxes, adhesive tapes, adhesive stickers, articles of cardboard for wrapping and packaging, articles of paper for wrapping and packaging, articles of plastic for wrapping and packaging, bows for decorating packaging, bows (decorative) for wrapping, paper ribbons, tissue paper, envelopes, party stationery, party streamers, tubes (cardboard), banners of cardboard, banners of paper, display banners of paper, display banners of card, certificates, calendars, diaries, leather covered diaries, memo pads, wallets of paper or card for holding money, roller ball pens, ballpoint pens, coloured pencils, coloured pens, containers for pencils, containers for pens, art materials, articles for drawing, articles for use in writing, framed photographs, framed poetry, framed pictures, holders for photographs (other than frames), albums for photographs, figurines made of plastic, trophies made of plastic, banners made of plastic, display banners made of plastic, photograph frames, key rings (non-metallic), cups, mugs, money boxes not of metal, drinking glasses, painted glassware, novelty glassware, ceramic figurines, figurines made of glass, ceramic ornaments, glass ornaments, artificial flowers, feathers (clothing accessories), novelty badges (for wear), toys, games, playthings, soft toys, soft toys in the form of animals, plush toys, balloons, confetti, table confetti, soap bubbles (toys), snow globes, plastic keys being novelties, toy whistles, masks (toy) and masks (theatrical); loyalty, reward and incentive



schemes; retail services connected with the sale of cards, greetings cards, printed matter, photographs, stationery, plastic materials for packaging, wrapping paper, gift wrap, gift tags, printed invitations, gift bags, gift boxes, adhesive tapes, adhesive stickers, bows for decorating packaging, bows (decorative) for wrapping, paper and cardboard, paper ribbons, ribbons for gift wrapping, ribbons, novelty buttons [badges] for wear, badges for wear, not of precious metal, tissue paper, card holders in the nature of display boards, envelopes, party stationery, bunting, banners, party streamers, paper badges, paper party bunting and banners, candles, candles for use in the decoration of cakes, cake decorations, certificates, calendars, diaries, memo pads, wallets of paper or card for holding money, pens and pencils, containers for pens and pencils, artists' materials, paint brushes, framed photographs, framed poetry, framed pictures, holders for photographs (other than frames), albums for photographs, latex and foil balloons either inflated with the use of helium gas or not, photograph and picture frames, soft toys, plush toys, plastic keys, plastic horseshoes [toys, games and playthings], confetti, table confetti, confectionery, toiletries, trophies made of common metals and their alloys, money boxes of metal, key rings of common metals, figurines of common metals, ornaments of common metals, key rings (trinkets or fobs), articles of jewellery, watches and clocks, paper, cardboard, printed matter, stationery, greeting cards, books, notebooks, calendars, post cards, announcement cards, book markers, labels, posters, wrapping paper, photograph albums, printed matter sealed in plastic or laminated, calendars, tables, identity cards and passports, plastic film for wrapping, photographs and graphic reproductions, postcards, prospectuses, bookbinding material, plastic materials for packaging, cards, playing cards, anniversary cards, announcement cards, birthday cards, blank cards, congratulatory cards, illustrated cards, wedding cards, framed gift cards, invitation cards, invitations, pads of invitations, card holders, gift wrap, gift wrapping paper, decorative wrapping paper, gift tags, gift bags, gift boxes, adhesive tapes, adhesive stickers, articles of cardboard for wrapping and packaging, articles of paper for wrapping and packaging, articles of plastic for wrapping and packaging, bows for decorating packaging, bows (decorative) for wrapping, paper ribbons, tissue paper, envelopes, party stationery, tubes (cardboard), banners of cardboard, banners of paper, display banners of paper, display banners of cardboard, certificates, diaries, leather covered diaries, memo pads, wallets of paper or card for holding money, roller ball pens, ballpoint pens, coloured pencils, coloured pens, containers for pencils, containers for pens, art materials, articles for drawing, articles for use in writing, framed photographs, framed poetry, framed pictures, holders for photographs (other than frames), albums for photographs, goods of plastic with sealed-in or printed advertising, plastic film other than for wrapping, figurines made of plastic, trophies made of plastic, photograph frames, key rings (non-metallic), cups, mugs, money boxes not of metal, drinking glasses, painted glassware, novelty glassware,

ceramic figurines, figurines made of glass, ceramic ornaments, glass ornaments, banners made of paper or plastic, display banners made of paper or plastic, clothing, footwear, headgear, artificial flowers, feathers (clothing accessories), novelty badges (for wear), toys, games and playthings, soft toys, soft toys in the form of animals, plush toys, balloons, confetti, table confetti, soap bubbles (toys), snow globes, plastic keys being novelties, toy whistles, masks (toy), masks (theatrical), party streamers, natural plants and flowers, parts and fittings for all the aforesaid goods; information and advice in relation to the aforesaid services.”