

O/653/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003552247

BY SHABNAM AHMED AND MELU MONKEY LIMITED

TO REGISTER THE FOLLOWING MARK:

Dew Bees

IN CLASSES 14, 18 AND 25

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600001583

BY CHRISTOPHER JOHN HEATH AND KATRINA ANGELA NICKELL

Background and pleadings

1. On 5 November 2020, Shabnam Ahmed and Melu Monkey Limited (“the applicants”) applied to register the trade mark shown below and the application was published for opposition purposes on 8 January 2021.

Dew Bees

2. Registration is sought for a variety of goods in Classes 14, 18 and 25, some of which will be discussed in more detail later.
3. Christopher John Heath and Katrina Angela Nickell (“the opponents”) oppose the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against the applicants’ Class 14 goods and is reliant on the mark set out below.
4. Trade mark UK00003411746, filed on 5 July 2019, registered on 27 September 2019.



5. The mark is registered for the following goods on which the opponents rely in their opposition:

Class 14 Jewellery; goods made of precious metals or coated herewith, namely, boxes, containers, statues and figurines; precious stones; imitation jewellery; rings, earrings, bracelets, brooches, necklaces, pendants, bangles, arm bands, cufflinks, chains, chokers, locketts, tie pins, tie slides, scarf rings and watches;

horological and chronometric instruments; parts and fittings for aforesaid goods.

6. The opponents filed Form TM7F. Form TM7F is a notice of “fast track” opposition, which can be used when the opposition is based on sections 5(1) and/or 5(2) of the Act.
7. In its Form TM7F, the opponents argue that the respective goods are identical or similar and that the marks are similar. Under further information, the opponents commented that, “We have bee profiles within our Dew range of jewellery.”
8. The applicants filed a Form TM8, making a number of points in their counterstatement. They said that there is “little confusion to be had” between their jewellery and that of the applicants and that their brand has “profile” and “recognition” and is the subject of Trustpilot and Google reviews. They further commented that internet searches “bring about links for Dew Bees products, website or affiliates” without confusion with the opponents’ brand. They also wrote of their intentions as a business. However, I must make a notional assessment of the relative similarity of the registered/applied for marks and goods.
9. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
10. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar

considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

11. In this case, neither party sought leave to file evidence.

12. A hearing was neither requested nor was it considered necessary.

13. Neither party elected to file written submissions.

14. Both parties are representing themselves in this case.

DECISION

15. Section 5(2)(b) of the Act reads as follows:

“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.”

16. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.- (1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) a European Union trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

...

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

17. Given its filing date, the trade mark upon which the opponents rely qualifies as an earlier trade mark as defined in section 6(1) of the Act. Also, as this trade mark had not completed its registration process more than 5 years before the filing date of the application in issue in these proceedings, it is not subject to proof of use pursuant to section 6A of the Act.

Section 5(2)(b) – case law

18. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

19. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas 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:

(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 greater 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 to mind the earlier mark, 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 the goods

20. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“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.”

21. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;

- (d) The respective trade channels through which the goods or services reach the market;
- (e) 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;
- (f) 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.

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

23. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

24. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“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 for 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.”

25. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion 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 GC 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 the responsibility for those goods lies with the same undertaking.”

26. I now consider the contested goods, all of which are in Class 14.

Jewellery

27. I define jewellery as items of personal adornment that are worn on the body (such as rings, bracelets etc) or clothing (such as brooches).

28. The applicants’ “Articles of jewellery”, “Decorative articles [trinkets or jewellery] for personal use”; “Items of jewellery”, “Jewellery”, “Jewellery articles”, “Jewellery for personal adornment”, “Jewellery for personal wear”, “Jewellery items”, “Jewellery products”, “Jewelry”, “Jewelry” and “Personal jewellery” are identical to the opponents’ “jewellery”.

29. I consider the applicants’ goods listed below to be *Merici* identical to the opponents’ “jewellery” and the “parts and fittings of the aforesaid goods” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark:

“Agate as jewellery”, “Amber pendants being jewellery”, “Amberoid pendants being jewellery”, “Amulets”, “Amulets being jewellery”, “Amulets [jewellery]”, “Amulets [jewellery, jewelry (Am.)]”, “Amulets [jewelry]”, “Ankle bracelets”, “Articles of imitation jewellery”, “Articles of jewellery coated with precious metals”, “Articles of jewellery made from rope chain”, “Articles of jewellery made of precious metal alloys”, “Articles of jewellery made of precious metals”, “Articles of jewellery with ornamental stones”, “Articles of jewellery with precious stones”, “Artificial jewellery”, “Bangle bracelets”, “Bangles”, “Bead bracelets”, “Bib necklaces”, “Body costume jewellery”, “Body jewellery”, “Body-piercing rings”, “Body-piercing studs”, “Bracelet charms”, “Bracelets”, “Bracelets and watches combined”, “Bracelets [charity]”, “Bracelets

[jewellery]", "Bracelets [jewellery, jewelry (Am.)]", "Bracelets [jewelry]", "Bracelets made of embroidered textile [jewellery]", "Bracelets made of embroidered textile [jewelry]", "Bracelets made of rubber or silicone with pattern or message", "Bracelets of precious metal", "Bridal headpieces in the nature of tiaras", "Brooches being jewelry", "Brooches [jewellery]", "Brooches [jewellery, jewelry (Am.)]", "Brooches [jewelry]", "Cameos [jewelry]", "Chain mesh of precious metals [jewellery]", "Chain mesh of semi-precious metals", "Chains [jewellery]", "Chains [jewellery, jewelry (Am.)]", "Chains [jewelry]", "Chains made of precious metals [jewellery]", "Chains of precious metals", "Chaplets", "Charity bracelets", "Charms", "Charms for jewellery", "Charms for jewelry", "Charms [jewellery]", "Charms [jewellery, jewelry (Am.)]", "Charms [jewellery] of common metals", "Charms [jewelry]", "Children's jewelry", "Choker necklaces", "Chokers", "Clasps for jewellery", "Clasps for jewelry", "Clip earrings", "Clips of silver [jewellery]", "Clips (Tie -)", "Cloisonne jewellery", "Cloisonné jewellery", "Cloisonné jewellery [jewelry (Am.)]", "Cloisonné jewelry", "Cloisonne pins", "Closures for necklaces", "Clothing ornaments of precious metals", "Collets being parts of jewellery", "Corporate recognition jewelry", "Costume jewellery", "Costume jewelry", "Crosses [jewellery]", "Crucifixes as jewellery", "Crucifixes as jewelry", "Cuff links", "Cuff links and tie clips", "Cuff links coated with precious metals", "Cuff links made of gold", "Cuff links made of imitation gold", "Cuff links made of porcelain", "Cuff links made of precious metals with precious stones", "Cuff links made of precious metals with semi-precious stones", "Cuff links made of silver plate", "Cuff links of precious metal", "Cuff links of precious metals with semi-precious stones", "Cufflinks", "Cuff-links", "Decorative brooches [jewellery]", "Decorative cuff link covers", "Decorative pins [jewellery]", "Decorative pins of precious metal", "Diadems", "Diamond jewelry", "Dress ornaments in the nature of jewellery", "Drop earrings", "Ear clips", "Ear ornaments in the nature of jewellery", "Ear studs", "Earrings", "Earrings of precious metal", "Enamelled jewellery",

“Engagement rings”, “Eternity rings”, “Facial jewellery”, “Fake jewellery”, “Fashion jewellery”, “Finger rings”, “Flexible wire bands for wear as a bracelet”, “Friendship bracelets”, “Friendship rings”, “Gold bracelets”, “Gold chains”, “Gold earrings”, “Gold jewellery”, “Gold necklaces”, “Gold plated bracelets”, “Gold plated brooches [jewellery]”, “Gold plated chains”, “Gold plated earrings”, “Gold plated rings”, “Gold rings”, “Gold thread [jewellery]”, “Gold thread [jewellery, jewelry (Am.)]”, “Gold thread jewelry”, “Gold thread [jewelry]”, “Gold-plated earrings”, “Gold-plated necklaces”, “Gold-plated rings”, “Hat jewellery”, “Hat jewelry”, “Hat ornaments of precious metal”, “Hoop earrings”, “Identification bracelets [jewelry]”, “Identification bracelets of precious metal [jewelry]”, “Identity plates of precious metal”, “Imitation jewellery”, “Imitation jewellery ornaments”, “Imitation jewelry”, “Ivory jewellery”, “Ivory [jewellery, jewelry (Am.)]”, “Ivory jewelry”, “Jade [jewellery]”, “Jewel chains”, “Jewel pendants”, “Jewellery being articles of precious metals”, “Jewellery being articles of precious stones”, “Jewellery brooches”, “Jewellery chain”, “Jewellery chain of precious metal for anklets”, “Jewellery chain of precious metal for bracelets”, “Jewellery chain of precious metal for necklaces”, “Jewellery chains”, “Jewellery charms”, “Jewellery coated with precious metal alloys”, “Jewellery coated with precious metals”, “Jewellery containing gold”, “Jewellery fashioned from bronze”, “Jewellery fashioned from non-precious metals”, “Jewellery fashioned of cultured pearls”, “Jewellery fashioned of precious metals”, “Jewellery fashioned of semi-precious stones”, “Jewellery findings”, “Jewellery foot chains”, “Jewellery hat pins”, “Jewellery in non-precious metals”, “Jewellery in precious metals”, “Jewellery in semi-precious metals”, “Jewellery in the form of beads”, “Jewellery, including imitation jewellery and plastic jewellery”, “Jewellery incorporating diamonds”, “Jewellery incorporating pearls”, “Jewellery incorporating precious stones”, “Jewellery made from gold”, “Jewellery made from silver”, “Jewellery made of bronze”, “Jewellery made of crystal”, “Jewellery made of crystal coated with precious metals”, “Jewellery made of glass”, “Jewellery made of non-precious

metal", "Jewellery made of plastics", "Jewellery made of plated precious metals", "Jewellery made of precious metals", "Jewellery made of precious stones", "Jewellery made of semi-precious materials", "Jewellery of precious metals", "Jewellery of yellow amber", "Jewellery (Paste -)", "Jewellery plated with precious metals", "Jewellery rope chain for anklets", "Jewellery rope chain for bracelets", "Jewellery rope chain for necklaces", "Jewelry brooches", "Jewelry chains", "Jewelry charms", "Jewelry charms in precious metals or coated therewith", "Jewelry clips for adapting pierced earrings to clip-on earrings", "Jewelry findings", "Jewelry for the head", "Jewelry guard chains", "Jewelry hat pins", "Jewelry hatpins", "Jewelry of yellow amber", "Jewelry (Paste -) [costume jewelry]", "Jewelry pins for use on hats", "Jewelry stickpins", "Key chains as jewellery [trinkets or fobs]", "Key chains for use as jewellery", "Key chains for use as jewelry", "Lapel pins", "Lapel pins [jewellery]", "Lapel pins [jewelry]", "Lapel pins of precious metals [jewellery]", "Links (Cuff -)", "Locketts", "Locketts [jewellery]", "Locketts [jewellery, jewelry (Am.)]", "Locketts [jewelry]", "Medallions", "Medallions [jewellery, jewelry (Am.)]", "Medallions made of non-precious metals", "Medallions made of precious metals", "Meditation beads", "Metal wire [precious metal]", "Misbaha [prayer beads]", "Neck chains", "Necklace charms", "Necklaces", "Necklaces [jewellery]", "Necklaces [jewellery, jewelry (Am.)]", "Necklaces [jewelry]", "Necklaces of precious metal", "Necktie fasteners", "Ornamental hat pins", "Ornamental lapel pins", "Ornamental pins", "Ornamental pins made of precious metal", "Ornaments for clothing [of precious metal]", "Ornaments (Hat -) of precious metal", "Ornaments [jewellery]", "Ornaments [jewellery, jewelry (Am.)]", "Ornaments (Shoe -) of precious metal", "Parts and fittings for jewellery", "Paste jewellery", "Paste jewellery [costume jewelry (Am.)]", "Paste jewellery [costume jewelry [Am.]", "Paste jewelry", "Paste jewelry [costume jewelry]", "Pearls [jewellery]", "Pearls [jewellery, jewelry (Am.)]", "Pearls [jewelry]", "Pendants", "Pendants [jewellery]", "Pendants [jewelry]", "Personal ornaments of precious metal", "Pet jewelry",

“Pewter jewellery”, “Pierced earrings”, “Pins being jewellery”, “Pins being jewelry”, “Pins [jewellery]”, “Pins [jewellery, jewelry (Am.)]”, “Pins [jewelry]”, “Pins (Ornamental -)”, “Pins (Tie -)”, “Plastic bracelets in the nature of jewelry”, “Plastic costume jewellery”, “Platinum jewelry”, “Platinum rings”, “Prayer beads”, “Precious jewellery”, “Ring bands [jewellery]”, “Rings being jewellery”, “Rings coated with precious metals”, “Rings [jewellery]”, “Rings [jewellery, jewelry (Am.)]”, “Rings [jewellery] made of non-precious metal”, “Rings [jewellery] made of precious metal”, “Rings [jewelry]”, “Rings of precious metal”, “Rings [trinket]”, “Rope chain [jewellery] made of common metal”, “Rope chain made of precious metal”, “Rosaries”, “Scarf clips being jewelry”, “Semi-precious articles of bijouterie”, “Shoe jewellery”, “Shoe jewelry”, “Shoe ornaments of precious metal”, “Signet rings”, “Silver bracelets”, “Silver earrings”, “Silver necklaces”, “Silver rings”, “Silver thread”, “Silver thread [jewellery]”, “Silver thread [jewellery, jewelry (Am.)]”, “Silver thread [jewelry]”, “Silver-plated bracelets”, “Silver-plated earrings”, “Silver-plated necklaces”, “Silver-plated rings”, “Spun silver [silver wire]”, “Square gold chain”, “Sterling silver jewellery”, “Threads of precious metal”, “Threads of precious metal [jewellery]”, “Threads of precious metal [jewellery, jewelry (Am.)]”, “Threads of precious metal [jewelry]”, “Threads of precious metals”, “Tiaras”, “Tie bars”, “Tie bars of precious metals”, “Tie chains of precious metal”, “Tie clasps of precious metals”, “Tie clips”, “Tie clips of precious metal”, “Tie fasteners”, “Tie holders of precious metal”, “Tie pins”, “Tie tacks”, “Tie-pins of precious metal”, “Trinkets coated with precious metal”, “Trinkets [jewellery]”, “Trinkets [jewellery, jewelry (Am.)]”, “Trinkets [jewelry]”, “Trinkets of bronze”, “Wedding bands”, “Wedding rings”, “Wire of precious metal [jewellery]”, “Wire of precious metal [jewellery, jewelry (Am.)]”, “Wire of precious metal [jewelry]”, “Wire thread of precious metal”, “Women's jewelry”, “Wooden bead bracelets”, “Wrist bands [charity]”, “Wristbands [charity]” and “Wristlets [jewellery]”.

30. I also consider the below applicants' goods, being precious metals or their alloys, precious and semi-precious stones and their imitations thereof, and beads, as *Merix* identical to the opponents' "parts and fittings" of "jewellery" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark:

"Agate [unwrought]", "Agates", "Alloys of precious metal", "Alloys of precious metals", "Artificial gem stones", "Artificial gemstones", "Artificial stones [precious or semi-precious]", "Beads for making jewellery", "Beads for making jewelry", "Cabochons", "Cabochons for making jewellery", "Cabochons for making jewelry", "Chalcedony", "Chalcedony used as gems", "Cubic zirconia", "Cut diamonds", "Diamond [unwrought]", "Diamonds", "Emerald", "Emeralds", "Gems", "Gemstones", "Gemstones, pearls and precious metals, and imitations thereof", "Gold", "Gold alloy ingots", "Gold alloys", "Gold and its alloys", "Gold base alloys", "Gold bullion", "Gold ingots", "Gold, unworked or semi-worked", "Gold, unwrought or beaten", "Imitation gold", "Imitation jet", "Imitation pearls", "Imitation precious stones", "Ingots of precious metal", "Ingots of precious metals", "Iridium", "Iridium alloys", "Iridium and its alloys", "Jade", "Jades", "Jet", "Jet, unwrought or semi-wrought", "Jewellery stones", "Jewels", "Man-made pearls", "Marcassites", "Natural gem stones", "Natural pearls", "Olivine [gems]", "Olivine [peridot]", "Opal", "Opals", "Osmium", "Osmium alloys", "Osmium and its alloys", "Palladium", "Palladium alloys", "Palladium and its alloys", "Pearl", "Pearls", "Pearls made of ambroid [pressed amber]", "Peridot", "Platinum", "Platinum alloy ingots", "Platinum alloys", "Platinum and its alloys", "Platinum ingots", "Platinum [metal]", "Precious and semi-precious gems", "Precious and semi-precious stones", "Precious gemstones", "Precious jewels", "Precious metal alloys", "Precious metal alloys [other than for use in dentistry]", "Precious metals", "Precious metals and their alloys", "Precious metals, unwrought or semi-wrought", "Precious stones", "Processed or semi-processed precious metals", "Rhinestones for making jewelry",

“Rhodium”, “Rhodium alloys”, “Rhodium and its alloys”, “Ruthenium”, “Ruthenium alloys”, “Ruthenium and its alloys”, “Sapphire”, “Sapphires”, “Sardonyx”, “Sardonyx [unwrought]”, “Semi-finished articles of precious metals for use in the manufacture of jewellery”, “Semi-finished articles of precious stones for use in the manufacture of jewellery”, “Semi-precious gemstones”, “Semi-precious stones”, “Semi-worked precious metals”, “Semi-wrought precious stones and their imitations”, “Silver”, “Silver alloy ingots”, “Silver alloys”, “Silver and its alloys”, “Silver bullion”, “Silver ingots”, “Silver, unwrought or beaten”, “Spinel [precious stones]”, “Synthetic precious stones”, “Synthetic stones [jewellery]”, “Topaz”, “Tourmaline gemstones”, “Unwrought agate”, “Unwrought and semi-wrought precious stones and their imitations”, “Unwrought precious stones”, “Unwrought sardonyx”, “Unwrought silver” and “Unwrought silver alloys”.

31. The following are all receptacles or covers for jewellery which would be sold through the same trade channels as the opponents’ “jewellery”: “Boxes for cufflinks”, “Boxes for tie-pins”, “Cases adapted to contain items of jewellery”, “Cases [fitted] for jewels”, “Cases for jewels”, “Fitted covers for jewelry rings to protect against impact, abrasion, and damage to the ring’s band and stones”, “Fitted jewelry pouches”, “Jewel cases [fitted]”, “Jewellery boxes”, “Jewellery boxes ...”, “Jewellery boxes [fitted]”, “Jewellery cases”, “Jewellery cases [caskets]”, “Jewellery cases [caskets or boxes]”, “Jewellery cases [fitted]”, “Jewellery caskets”, “Jewellery rolls”, “Jewelry boxes”, “Jewelry boxes not of metal”, “Jewelry boxes, not of metal”, “Jewelry boxes, not of precious metal”, “Jewelry boxes of metal”, “Jewelry cases”, “Jewelry cases [caskets]”, “Jewelry cases [caskets or boxes]”, “Jewelry cases not of precious metal”, “Jewelry caskets”, “Jewelry organizer cases”, “Jewelry organizer rolls for travel”, “Jewelry rolls”, “Jewelry rolls for storage”, “Jewelry rolls for travel”, “Leather jewelry boxes”, “Musical jewelry boxes”, “Presentation boxes for gemstones”, “Presentation boxes for jewellery”, “Presentation boxes for jewelry”, “Ring holders of precious metal”, “Small jewelry boxes, not of precious metal” and “Wooden jewellery boxes”.

32. While they differ in purpose and they are not in competition, there is complementarity in that jewellery is important to such receptacles or covers and I think it likely that the average consumer may think the responsibility for the goods lies with the same undertaking. I consider the respective goods to be of medium similarity.

Watches and clocks

33. The opponents' "watches" is identical to the applicants' "Watches".

34. I consider the applicants' goods listed below to be *Merix* identical to the opponents' "horological and chronometric instruments" and "parts and fittings for aforesaid goods" in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark:

"Alarm clocks", "Alarm watches", "Anchors [clock and watch making]", "Anchors [clock- and watchmaking]", "Apparatus for sports timing [stopwatches]", "Apparatus for timing sports events", "Atomic clocks", "Automatic watches", "Automobile clocks", "Bands for watches", "Barrels [clock and watch making]", "Barrels [clock- and watchmaking]", "Bracelets for watches", "Buckles for watchstraps", "Cabinets for clocks", "Chains for watches", "Chains (Watch -)", "Chronographs as watches", "Chronographs for use as timepieces", "Chronographs for use as watches", "Chronographs [watches]", "Chronological instruments", "Chronometers", "Chronometric apparatus and instruments", "Chronometric instruments", "Chronometrical instruments", "Chronoscopes", "Clock and watch hands", "Clock cases being parts of clocks", "Clock dials", "Clock faces", "Clock hands", "Clock hands [clock and watch making]", "Clock hands [clock- and watchmaking]", "Clock housings", "Clock mechanisms", "Clock movements", "Clockmaking pendulums",

“Clocks”, “Clocks and parts therefor”, “Clocks and watches”, “Clocks and watches, electric”, “Clocks and watches for pigeon-fanciers”, “Clocks for world time zones”, “Clocks having quartz movements”, “Clocks incorporating ceramics”, “Clocks incorporating radios”, “Clockwork movements”, “Clockworks”, “Control clocks”, “Control clocks [master clocks]”, “Desk clocks”, “Dials [clock and watch making]”, “Dials [clock- and watchmaking]”, “Dials (clockmaking and watchmaking)”, “Dials for clock and watch making”, “Dials for clock- and watchmaking”, “Dials for clock and watch-making”, “Dials for clock-and-watch-making”, “Dials for clocks”, “Dials for horological articles”, “Dials for watches”, “Dials (Sun -)”, “Digital clocks”, “Digital clocks being electronically controlled”, “Digital clocks incorporating radios”, “Digital clocks with automatic timers”, “Digital time indicators having temperature displays”, “Digital watches with automatic timers”, “Divers' watches”, “Diving watches”, “Dress watches”, “Electric alarm clocks”, “Electric timepieces”, “Electric watches”, “Electrical timepieces”, “Electrically operated movements for clocks”, “Electrically operated movements for watches”, “Electronic alarm clocks”, “Electronic clocks”, “Electronic timepieces”, “Electronic watches”, “Electronically operated movements for clocks”, “Electronically operated movements for watches”, “Escapements”, “Faces for chronometric instruments”, “Faces for clocks”, “Faces for horological instruments”, “Faces for watches”, “Fittings for watches”, “Floor clocks”, “Grandfather clocks”, “Hands (Clock -) [clock and watch making]”, “Hands for clocks”, “Horological articles”, “Horological instruments”, “Horological instruments having quartz movements”, “Horological instruments made of gold”, “Horological products”, “Housings for clocks and watches”, “Industrial clocks”, “Leather watch straps”, “Mantle clocks”, “Master clocks”, “Mechanical watch oscillators”, “Mechanical watches”, “Mechanical watches with automatic winding”, “Mechanical watches with manual winding”, “Metal expanding watch bracelets”, “Metal watch bands”, “Miniature clocks”, “Movements for clocks and watches”, “Movements for watches and

clocks”, “Non-leather watch straps”, “Oscillators for clocks”, “Oscillators for timepieces”, “Oscillators for watches”, “Parts and fittings for chronometric instruments”, “Parts and fittings for horological instruments”, “Parts and fittings for watches”, “Parts for clocks”, “Parts for clockworks”, “Parts for watches”, “Pendant watches”, “Pendants for watch chains”, “Pendulum clocks”, “Pendulums [clock and watch making]”, “Pendulums [clock- and watchmaking]”, “Platinum watches”, “Pocket watches”, “Quartz clocks”, “Quartz watches”, “Ship's chronometers”, “Silver watches”, “Small clocks”, “Solar watches”, “Sports watches”, “Springs (Watch -)”, “Stop watches”, “Stopwatches”, “Straps for watches”, “Straps for wrist watches”, “Straps for wristwatches”, “Sun dials”, “Sundials”, “Table clocks”, “Table watches”, “Time clocks [master clocks] for controlling other clocks”, “Time instruments”, “Timekeeping instruments”, “Timekeeping systems for sports”, “Timepieces”, “Timing clocks”, “Travel clocks”, “Wall clocks”, “Watch and clock hands”, “Watch and clock springs”, “Watch bands”, “Watch bracelets”, “Watch cases [parts of watches]”, “Watch casings”, “Watch chains”, “Watch clasps”, “Watch crowns”, “Watch crystals”, “Watch dials”, “Watch faces”, “Watch fobs”, “Watch glasses”, “Watch hands”, “Watch movements”, “Watch parts”, “Watch springs”, “Watch straps”, “Watch straps made of metal or leather or plastic”, “Watch straps of nylon”, “Watch straps of plastic”, “Watch straps of polyvinyl chloride”, “Watch straps of synthetic material”, “Watch winders”, “Watchbands”, “Watches”, “Watches and clocks”, “Watches bearing insignia”, “Watches containing a game function”, “Watches containing an electronic game function”, “Watches for nurses”, “Watches for outdoor use”, “Watches for sporting use”, “Watches incorporating a memory function”, “Watches incorporating a telecommunication function”, “Watches made of gold”, “Watches made of plated gold”, “Watches made of precious metals”, “Watches made of precious metals or coated therewith”, “Watches made of rolled gold”, “Watches with the function of wireless communication”, “Watches with wireless communication function”, “Watchmaking pendulums”, “Watchstraps”,

“Watchstraps made of leather”, “Women's watches”, “Wrist straps for watches”, “Wrist watch bands”, “Wrist watches”, “Wristlet watches”, “Wristwatches”, “Wristwatches with GPS apparatus”, “Wristwatches with GPS feature”, “Wristwatches with pedometer feature” and “Wristwatches with pedometers”.

35. The following are receptacles or stands for watches and clocks or their making and are all sold through the same trade channels as the opponents' “horological and chronometric instruments”: “Cases adapted for holding watches”, “Cases adapted to contain horological articles”, “Cases adapted to contain watches”, “Cases [fitted] for clocks”, “Cases [fitted] for horological articles”, “Cases [fitted] for watches”, “Cases for chronometric instruments”, “Cases for clock- and watchmaking”, “Cases for clock and watch-making”, “Cases for horological instruments”, “Cases for watches”, “Cases for watches and clocks”, “Cases for watches [presentation]”, “Clock boxes”, “Clock cabinets”, “Clock cases”, “Presentation boxes for horological articles”, “Presentation boxes for watches”, “Presentation cases for horological articles”, “Stands for clocks”, “ ... watch boxes”, “Watch boxes”, “Watch boxes [presentation]”, “Watch cases” and “Watch pouches”.

36. While they differ in purpose and they are not in competition, there is complementarity in that watches and clocks are important to such receptacles or stands and I think it likely that the average consumer may think the responsibility for the goods lies with the same undertaking. I consider the respective goods to be of medium similarity.

Specific goods made from precious metal

37. The applicants' “Boxes of precious metal” is identical to the opponents' “goods made of precious metals or coated herewith, namely, boxes ... ”.

38. Given that cases and caskets are types of container, the applicants' “Cases of precious metals for clocks”, “Cases of precious metals for horological

articles”, “Cases of precious metals for jewels”, “Cases of precious metals for watches”, “Commemorative boxes of precious metal”, “Decorative boxes made of precious metal”, “Jewel cases of precious metal”, “Jewellery boxes of precious metal”, “Jewellery boxes of precious metals”, “Jewellery cases [caskets] of precious metal”, “Jewellery cases of precious metal”, “Jewellery caskets of precious metal”, “Jewelry boxes of precious metal”, “Jewelry boxes of precious metals”, “Jewelry cases [caskets] of precious metal”, “Jewelry cases of precious metal”, “Jewelry caskets of precious metal” and “Small jewellery boxes of precious metals” are *Meric* identical to the opponents’ “goods made of precious metals or coated herewith, namely, boxes, containers ...”. The goods designated by the trade mark application are included in a more general category designated by the earlier mark.

39. I consider the opponents’ “goods made of precious metals or coated herewith, namely, ... figurines” to be identical to the applicants’ “Figures made of precious metal”, “Figures of precious metal”, “Figurines coated with precious metal”, “Figurines made from gold”, “Figurines made from silver”, “Figurines of precious metal” and “Figurines [statuettes] of precious metal”.

40. The applicants’ “Action figures (Decorative -) of precious metal”, “Holiday ornaments [figurines] of precious metal, other than tree ornaments”, “Miniature figurines [coated with precious metal]”, “Model figures [ornaments] coated with precious metal”, “Model figures [ornaments] made of precious metal” and “Ornamental figurines made of precious metal” are *Meric* identical to the opponents’ “goods made of precious metals or coated herewith, namely, ... figurines” in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.

41. I also consider the applicants’ “Crucifixes of precious metal, other than jewellery” and “Crucifixes of precious metal, other than jewelry” to be *Meric* identical to the opponents’ “goods made of precious metals or coated herewith, namely, ... figurines” in that the goods designated by the trade

mark application are included in a more general category designated by the earlier mark because they are goods of precious metal, they are figurative, and, not being jewellery, they can be mounted like figures. If I am wrong, and the fact that the figure in question is mounted on a cross is considered not to make the items in question *Merix* identical, they are highly similar.

42. The applicants' "... figurines, made of or coated with precious or semi-precious metals or stones, or imitations thereof" is *Merix* identical to the opponents' "goods made of precious metals or coated herewith, namely, ... figurines" in that the goods designated by the earlier mark are included in a more general category designated by the trade mark application.
43. The applicants' "Figurines for ornamental purposes of precious stones", "Figurines made of imitation gold", "Figurines of precious or semi precious stones" and "Figurines of precious stones" are highly similar to the opponents' "goods made of precious metals or coated herewith, namely, ... figurines".
44. The opponents' "goods made of precious metals or coated herewith, namely, ... statues ... " are identical to the applicants' "Ornaments [statues] made of precious metal", "Statues of precious metal", "Statues of precious metal and their alloys" and "Statues of precious metals".
45. The applicants' "Desktop statuary made of precious metal", "Statues of precious metal of religious icons", "Statuettes of precious metal" and "Statuettes of precious metal and their alloys" are *Merix* identical to the opponents' "goods made of precious metals or coated herewith, namely, ... statues ... " in that the goods designated by the trade mark application are included in a more general category designated by the earlier mark.
46. The applicants' "Statues ... made of or coated with precious or semi-precious metals or stones, or imitations thereof" is *Merix* identical to the opponents' "goods made of precious metals or coated herewith, namely, ... statues ... "

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

47. The applicants' "Busts of precious metal", "Busts of precious metals", "Commemorative statuary cups made of precious metal", "Model animals [ornaments] coated with precious metal", "Model animals [ornaments] made of precious metal", "Ornamental sculptures made of precious metal", "Sculptures made from precious metal", "Sculptures made of precious metal", "Sculptures of precious metal", "Statuettes made of semi-precious metals" and "Statuettes made of semi-precious stones" are all figurative to some degree, are made of precious or semi-precious materials, and would be sold through the same trade channels as the opponents' "goods made of precious metals or coated herewith, namely, ... statues ... ". They are highly similar.
48. The applicants' "Scale models [ornaments] of precious metal" could be figurative, but they could also be of inanimate things such as vehicles. However, they are made of the same material and would be sold through the same trade channels. They are also highly similar.
49. While not being figurative, the following applicants' goods, like statues, are made to be admired, are all made from a material of value or have the appearance thereof, and share the same trade channels as the opponents' goods: "3D wall art made of precious metal", "Adhesive wall decorations of precious metal", "Jet (Ornaments of -)" "Metal works of art [precious metal]", "Objet d'art made of precious metals", "Objet d'art made of precious stones", "Objet d'art of enamelled gold", "Objet d'art of enamelled silver", "Ornaments, made of or coated with precious or semi-precious metals or stones, or imitations thereof", "Silver objets d'art", "Ornaments of jet", "Wall decorations of precious metal" and "Works of art of precious metal". They are of medium similarity.
50. The applicants' "Grave markers of precious metal" only have the material they are made from in common with the opponents' specific goods made of

precious metal. They would be sold through specialist retailers such as undertakers and are not in competition with the opponents' goods, nor are they complementary. They are dissimilar.

Tokens

51. The applicants' "Ceramic discs for use as tokens of value", "Copper tokens", "Metal tokens used for mass transit" and "Tokens (Copper -) are all primarily functional items which represent a monetary value or are used in settings like car parks or cloakrooms. They are dissimilar from the opponents' (named) goods of precious metal, jewellery, clocks and watches.

Other items that may be found in a jeweller's

52. The function of badges, medals and insignia is primarily practical (such as identifying a person or rank or denoting an achievement). Unlike jewellery, any aesthetic considerations are secondary. However, although these goods are not in competition with jewellery, nor are they complementary, they are worn on the body like jewellery and can be made of the same metals from which jewellery is made. They could also be sold through a jeweller. I find the items below to be of medium similarity to the opponents' "jewellery":

"Badges of precious metal", "Commemorative medals", "Gold medals"
"Insignia of precious metals", "Insignias of precious metal", "Lapel
badges of precious metal", "Medals", "Medals coated with precious
metals", "Medals made of precious metals", "Metal badges for wear
[precious metal]"

53. While the below coins, shields and trophies could be sold through a jeweller's and made from the same metals from which jewellery is made, they differ in purpose from jewellery. These goods are not in competition with jewellery, nor are they complementary. I find these items to be of low similarity to the opponents' "jewellery":

“Coins”, “Collectable monetary coin sets”, “Collectible coins”, “Commemorative coins”, “Commemorative shields”, “Commemorative shields of precious metal”, “Gold bullion coins”, “Gold coins”, “Monetary coin sets for collecting purposes”, “Non-monetary coins”, “Precious metal trophies”, “Prize cups of precious metals”, “Trophies coated with precious metal alloys”, “Trophies coated with precious metals”, “Trophies made of precious metal alloys”, “Trophies made of precious metals” and “Trophies of precious metals”.

Key rings

54. Except where they are specifically designated as jewellery, I do not consider key rings to be jewellery in that they are not ordinarily worn on the body and have a primarily practical function. However, where they are decorative or are made of a precious metal, and also for their associated charms, I consider that they would be sold through the same trade channels as the opponents’ “jewellery” and I therefore consider the goods below to be of medium similarity.

55. “Decorative key rings”, “Charms for key chains”, “Charms for key rings” “Fancy keyrings of precious metals”, “Key chains of precious metal”, “Key chains [split rings with trinket or decorative fob]”, “Key chains [trinkets or fobs]”, “Key charms coated with precious metals”, “Key charms of precious metals” and “Key charms [trinkets or fobs]”, “Key fobs made of precious metal”, “Key fobs of precious metals”, “Key fobs [rings] coated with precious metal”, “Key holders of precious metals”, “Key holders [trinkets or fobs]”, “Key rings of precious metal”, “Key rings of precious metals”, “Key rings [split rings with trinket or decorative fob]”, “Key rings [trinkets or fobs]”, “Key rings [trinkets or fobs] of precious metal”, “Key tags [trinkets or fobs]”, “Retractable key rings [trinkets or fobs]” and “Split rings of precious metal for keys”.

56. The goods below encompass the ones above and, in the absence of a fallback specification, I deem them also to be of medium similarity to the opponents' "jewellery":

"Fobs for keys", "Key chains", "Key chain tags", "Key fobs", "Key rings", "Key rings and key chains, and charms therefor", "Metal key chains", "Metal key fobs", "Retractable key chains" and "Retractable key rings".

57. The remaining types of key ring are utilitarian items, distinguishable from those that might be sold through a jeweller's, being retailed through a variety of outlets, such as supermarkets and key cutters. They are dissimilar to the opponents' goods:

"Imitation leather key chains", "Imitation leather key rings", "Key fobs, not of metal", "Key fobs of common metal", "Key fobs of imitation leather", "Key rings, not of metal", "Key rings of leather", "Keyrings of common metal", "Leather key fobs", "Leather key rings" and "Non-metal key rings".

58. As some degree of similarity between the goods is required for there to be a likelihood of confusion¹, the opposition must fail in respect of the following goods in the applicants' specification:

Class 14 Ceramic discs for use as tokens of value; Copper tokens; Grave markers of precious metal; Imitation leather key chains; Imitation leather key rings; Key fobs, not of metal; Key fobs of common metal; Key fobs of imitation leather; Key rings, not of metal; Key rings of leather; Keyrings of common metal; Leather key fobs; Leather key rings; Metal tokens used for mass transit; Non-metal key rings; Tokens (Copper -).

¹ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

The average consumer and the nature of the purchasing act

59. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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.”

60. In considering the goods in conflict that are jewellery, other items of aesthetic value, such as objets d'art and statues, as well as clocks and watches, along with the metals and gemstones from which such items would be made and receptacles for jewellery, clocks and watches, all would be bought by members of the public or professional traders.

61. Given that the goods include things made of precious metals, they can be very expensive and of high quality, but they can also be more simply produced and inexpensive items, some of the goods at issue being made of less prized materials. Many such purchases would also require a considerable degree of deliberation as to quality, including, where appropriate, consideration of purity, hallmarks and so on and visual appeal. Even those purchases at the lower end of the cost spectrum would necessitate some thought as to style and so on. In most cases, the various factors in play would lead to a member of the public or trader paying a

medium level of attention during the purchasing process. However, I keep in mind that, where the transaction involves highly valuable precious metals, such as gold, or very expensive precious stones, such as diamonds, the level of attention is bound to be more than medium.

62. The purchase of jewellery, watches and so on, by members of the public would predominantly involve visual considerations as particular goods were looked for and scrutinised. While there may be verbal elements in the purchasing process, such as making a request of a shop assistant, these elements would be minor when compared to the visual ones.

63. For professional traders, while there would be some verbal interaction, final purchases would involve visual scrutiny of goods or agreements and so visual considerations would predominate.


Comparison of the trade marks

64. 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.”

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

66. The opponents' and the applicants' marks are shown below:

Opponent's trade mark	Applicant's trade mark
	Dew Bees

67. The opponents' mark is figurative, but with the word "Dew" being the element of the mark which strongly dominates the overall impression. The stylistic aspects of the mark play a much more limited role.

68. The applicants' mark consists of the plain words "Dew Bees", the only thing that contributes to the overall impression. Neither word dominates the other.

69. Visually, the word in the opponents' mark, "Dew" is given emphasis by the stylised presentation of the text, in grey, and as if it is hand-written with a thick nib. As a word mark, the applicants' "Dew Bees" has potential notional use in the same colour as that of the opponents' mark. It could also be fairly used in an italic font such that it would be closer in style to the opponents' mark which renders the stylistic differences less significant. While the marks have the identical word "Dew" in common, the applicants' mark has an additional four-letter word. I consider the marks to be of medium similarity visually.

70. Aurally, the opponents' mark would be pronounced "Dyoo", while the applicants' mark would be voiced as "Dyoo Beez". They begin identically and

then the applicants' mark has a second word which is necessarily phonetically dissimilar. I find the marks to be of medium aural similarity.

71. Conceptually, the marks have the word "Dew" in common, which evokes thoughts of condensation on the ground in the morning or evening. "Bees" are the yellow and black flying insects that pollinate flowers and so the second word in the applicants' mark gives rise to that concept. The concept in the applicants' mark is not a wholistic one in that only a minority of consumers (not a proportion of the relevant public that would be considered significant) would see the concept of "dew bees" as types of bees that are attracted to dew, for example. Rather, the two words are unconnected and therefore give rise to two distinct concepts. Overall, I find the respective marks to be of medium conceptual similarity.

Distinctive character of the earlier mark

72. 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).”

73. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

74. The word “Dew” is not suggestive of goods for which the mark is registered, but it is not highly distinctive in the way that it would be if it was an invented word. I consider the mark to be inherently distinctive to a medium degree. The stylisation might be said to add, marginally, to the distinctiveness of the mark. However, I bear in mind that the degree of distinctiveness of the earlier mark is only likely to impact on the likelihood of confusion to the extent that it relates to the point of commonality between the marks², the word “Dew” itself in this case.

Likelihood of confusion

75. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I

² See, *Kurt Geiger v A-List Corporate Limited*, BL O-075- 13

mentioned above, it is necessary for me to keep in mind the distinctive character of the opponents' trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

76. When compared with the applicants' mark, I have found the earlier mark to be of medium similarity visually, aurally, and conceptually. Except where I have found the goods to be dissimilar, they are either identical (although in one case if I am wrong about the goods being *Meric* identical, they are highly similar), highly similar, of medium similarity, or of low similarity. The average consumer, whether as a member of the public, or a professional trader, will mostly pay a medium level of attention during the purchasing process, although I keep in mind that, where the transaction involves highly valuable precious metals, such as gold, or very expensive precious stones, such as diamonds, the level of attention is bound to be more than medium. Visual considerations will predominate during the purchasing process. The single word in the earlier mark is of a medium level of inherent distinctiveness and it is identical to the first word of the applicants' mark.

77. I consider there to be sufficient differences between the opponents' mark and the applicants' mark to avoid them being mistakenly recalled as each other. While the opponents' mark constitutes the first word of the applicants' mark, the applicants' mark has a second word which the average consumer could not fail to notice, and recall, when considering the respective marks. There is no likelihood of direct confusion.

78. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

79. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. The judge said:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the

whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

80. While the average consumer would notice that the respective marks are different, the question remains whether they would consider the later mark to be another brand of the owner of the earlier mark, or that of a related undertaking.

81. While a minority of consumers may see “Dew Bees” as a wholistic unit, this group of consumers would not constitute a significant proportion of the relevant public. Consequently, these words will not be perceived and remembered cohesively as “Dew-Bees”. Rather, most consumers will view the words segmentally as “Dew plus Bees” or “Dew/Bees”. As such, the word “Dew” in “Dew Bees” performs an independent distinctive role within the mark, that word being the sole word in the earlier mark which I have found to be of medium inherent distinctive character.

82. Although finding that an element of a composite mark which is identical to an earlier mark has an independent distinctive role does not automatically lead to a finding of a likelihood of confusion, I do consider such a finding to be the correct one in this case. The average consumer would readily go through a mental process whereby, considering the shared goods such as jewellery, watches and so on, they would see what the marks have in common as the result of an economic connection rather than coincidence. They would regard “Dew Bees” as a coherent sub-brand of the “house mark” “Dew”. Many of the goods could quite easily form the “Bees” range of “Dew” products, such as jewellery which takes the shape of bees, or watches which are decorated with bees, or have a bee motif on them.

83. Even allowing for those instances where the level of attention paid would undoubtedly be more than medium, the average consumer would conclude that the parties’ marks indicate goods sold by the same or economically linked undertakings where those goods are identical, highly similar, or of medium similarity. I find that there is a likelihood of indirect confusion in these cases. However, taking account of the interdependency principle and the net effect of the similarity between the marks, and other factors, such as the distinctiveness of the marks and the level of attention paid during the purchasing process, it would be too great a leap to find a likelihood of indirect confusion for the goods that I have found to be of low similarity.

CONCLUSION

84. The opposition has succeeded in relation to the following goods, for which the application is refused:

Class 14 3D wall art made of precious metal; Action figures (Decorative -) of precious metal; Adhesive wall decorations of precious metal; Agate as jewellery; Agate [unwrought]; Agates; Alarm clocks; Alarm watches; Alloys of precious metal; Alloys of precious metals; Amber pendants being jewellery; Amberoid pendants being jewellery; Amulets; Amulets being jewellery; Amulets

[jewellery]; Amulets [jewellery, jewelry (Am.)]; Amulets [jewelry]; Anchors [clock and watch making]; Anchors [clock- and watchmaking]; Ankle bracelets; Apparatus for sports timing [stopwatches]; Apparatus for timing sports events; Articles of imitation jewellery; Articles of jewellery; Articles of jewellery coated with precious metals; Articles of jewellery made from rope chain; Articles of jewellery made of precious metal alloys; Articles of jewellery made of precious metals; Articles of jewellery with ornamental stones; Articles of jewellery with precious stones; Artificial gem stones; Artificial gemstones; Artificial jewellery; Artificial stones [precious or semi-precious]; Atomic clocks; Automatic watches; Automobile clocks; Badges of precious metal; Bands for watches; Bangle bracelets; Bangles; Barrels [clock and watch making]; Barrels [clock- and watchmaking]; Bead bracelets; Beads for making jewellery; Beads for making jewelry; Bib necklaces; Body costume jewellery; Body jewellery; Body-piercing rings; Body-piercing studs; Boxes for cufflinks; Boxes for tie-pins; Boxes of precious metal; Bracelet charms; Bracelets; Bracelets and watches combined; Bracelets [charity]; Bracelets for watches; Bracelets [jewellery]; Bracelets [jewellery, jewelry (Am.)]; Bracelets [jewelry]; Bracelets made of embroidered textile [jewellery]; Bracelets made of embroidered textile [jewelry]; Bracelets made of rubber or silicone with pattern or message; Bracelets of precious metal; Bridal headpieces in the nature of tiaras; Brooches being jewelry; Brooches [jewellery]; Brooches [jewellery, jewelry (Am.)]; Brooches [jewelry]; Buckles for watchstraps; Busts of precious metal; Busts of precious metals; Cabinets for clocks; Cabochons; Cabochons for making jewellery; Cabochons for making jewelry; Cameos [jewelry]; Cases adapted for holding watches; Cases adapted to contain horological articles; Cases adapted to contain items of jewellery; Cases adapted to contain watches; Cases [fitted] for clocks;

Cases [fitted] for horological articles; Cases [fitted] for jewels;
Cases [fitted] for watches; Cases for chronometric instruments;
Cases for clock- and watchmaking; Cases for clock and watch-
making; Cases for horological instruments; Cases for jewels;
Cases for watches; Cases for watches and clocks; Cases for
watches [presentation]; Cases of precious metals for clocks;
Cases of precious metals for horological articles; Cases of
precious metals for jewels; Cases of precious metals for
watches; Chain mesh of precious metals [jewellery]; Chain mesh
of semi-precious metals; Chains for watches; Chains [jewellery];
Chains [jewellery, jewelry (Am.)]; Chains [jewelry]; Chains made
of precious metals [jewellery]; Chains of precious metals; Chains
(Watch -); Chalcedony; Chalcedony used as gems; Chaplets;
Charity bracelets; Charms; Charms for jewellery; Charms for
jewelry; Charms for key chains; Charms for key rings; Charms
[jewellery]; Charms [jewellery, jewelry (Am.)]; Charms [jewellery]
of common metals; Charms [jewelry]; Children's jewelry; Choker
necklaces; Chokers; Chronographs as watches; Chronographs
for use as timepieces; Chronographs for use as watches;
Chronographs [watches]; Chronological instruments;
Chronometers; Chronometric apparatus and instruments;
Chronometric instruments; Chronometrical instruments;
Chronoscopes; Clasps for jewellery; Clasps for jewelry; Clip
earrings; Clips of silver [jewellery]; Clips (Tie -); Clock and watch
hands; Clock boxes; Clock cabinets; Clock cases; Clock cases
being parts of clocks; Clock dials; Clock faces; Clock hands;
Clock hands [clock and watch making]; Clock hands [clock- and
watchmaking]; Clock housings; Clock mechanisms; Clock
movements; Clockmaking pendulums; Clocks; Clocks and parts
therefor; Clocks and watches; Clocks and watches, electric;
Clocks and watches for pigeon-fanciers; Clocks for world time
zones; Clocks having quartz movements; Clocks incorporating
ceramics; Clocks incorporating radios; Clockwork movements;

Clockworks; Cloisonne jewellery; Cloisonné jewellery; Cloisonné jewellery [jewelry (Am.)]; Cloisonné jewelry; Cloisonne pins; Closures for necklaces; Clothing ornaments of precious metals; Coins; Collectable monetary coin sets; Collectible coins; Collets being parts of jewellery; Commemorative boxes of precious metal; Commemorative coins; Commemorative medals; Commemorative shields; Commemorative shields of precious metal; Commemorative statuary cups made of precious metal; Control clocks; Control clocks [master clocks]; Corporate recognition jewelry; Costume jewellery; Costume jewelry; Crosses [jewellery]; Crucifixes as jewellery; Crucifixes as jewelry; Crucifixes of precious metal, other than jewellery; Crucifixes of precious metal, other than jewelry; Cubic zirconia; Cuff links; Cuff links and tie clips; Cuff links coated with precious metals; Cuff links made of gold; Cuff links made of imitation gold; Cuff links made of porcelain; Cuff links made of precious metals with precious stones; Cuff links made of precious metals with semi-precious stones; Cuff links made of silver plate; Cuff links of precious metal; Cuff links of precious metals with semi-precious stones; Cufflinks; Cuff-links; Cultured pearls; Cut diamonds; Decorative articles [trinkets or jewellery] for personal use; Decorative boxes made of precious metal; Decorative brooches [jewellery]; Decorative cuff link covers; Decorative key rings; Decorative pins [jewellery]; Decorative pins of precious metal; Desk clocks; Desktop statuary made of precious metal; Diadems; Dials [clock and watch making]; Dials [clock- and watchmaking]; Dials (clockmaking and watchmaking); Dials for clock and watch making; Dials for clock- and watchmaking; Dials for clock and watch-making; Dials for clock-and-watch-making; Dials for clocks; Dials for horological articles; Dials for watches; Dials (Sun -); Diamond jewelry; Diamond [unwrought]; Diamonds; Digital clocks; Digital clocks being electronically controlled; Digital clocks incorporating radios; Digital clocks with

automatic timers; Digital time indicators having temperature displays; Digital watches with automatic timers; Divers' watches; Diving watches; Dress ornaments in the nature of jewellery; Dress watches; Drop earrings; Ear clips; Ear ornaments in the nature of jewellery; Ear studs; Earrings; Earrings of precious metal; Electric alarm clocks; Electric timepieces; Electric watches; Electrical timepieces; Electrically operated movements for clocks; Electrically operated movements for watches; Electronic alarm clocks; Electronic clocks; Electronic timepieces; Electronic watches; Electronically operated movements for clocks; Electronically operated movements for watches; Emerald; Emeralds; Enamelled jewellery; Engagement rings; Escapements; Eternity rings; Faces for chronometric instruments; Faces for clocks; Faces for horological instruments; Faces for watches; Facial jewellery; Fake jewellery; Fancy keyrings of precious metals; Fashion jewellery; Figures made of precious metal; Figures of precious metal; Figurines coated with precious metal; Figurines for ornamental purposes of precious stones; Figurines made from gold; Figurines made from silver; Figurines made of imitation gold; Figurines of precious metal; Figurines of precious or semi precious stones; Figurines of precious stones; Figurines [statuettes] of precious metal; Finger rings; Fitted covers for jewelry rings to protect against impact, abrasion, and damage to the ring's band and stones; Fitted jewelry pouches; Fittings for watches; Flexible wire bands for wear as a bracelet; Floor clocks; Fobs for keys; Friendship bracelets; Friendship rings; Gems; Gemstones; Gemstones, pearls and precious metals, and imitations thereof; Gold; Gold alloy ingots; Gold alloys; Gold and its alloys; Gold base alloys; Gold bracelets; Gold bullion; Gold bullion coins; Gold chains; Gold coins; Gold earrings; Gold ingots; Gold jewellery; Gold medals; Gold necklaces; Gold plated bracelets; Gold plated brooches [jewellery]; Gold plated chains; Gold plated earrings;

Gold plated rings; Gold rings; Gold thread [jewellery]; Gold thread [jewellery, jewelry (Am.)]; Gold thread jewelry; Gold thread [jewelry]; Gold, unworked or semi-worked; Gold, unwrought or beaten; Gold-plated earrings; Gold-plated necklaces; Gold-plated rings; Grandfather clocks; Hands (Clock -) [clock and watch making]; Hands for clocks; Hat jewellery; Hat jewelry; Hat ornaments of precious metal; Holiday ornaments [figurines] of precious metal, other than tree ornaments; Hoop earrings; Horological articles; Horological instruments; Horological instruments having quartz movements; Horological instruments made of gold; Horological products; Housings for clocks and watches; Identification bracelets [jewelry]; Identification bracelets of precious metal [jewelry]; Identity plates of precious metal; Imitation gold; Imitation jet; Imitation jewellery; Imitation jewellery ornaments; Imitation jewelry; Imitation pearls; Imitation precious stones; Industrial clocks; Ingots of precious metal; Ingots of precious metals; Insignia of precious metals; Insignias of precious metal; Iridium; Iridium alloys; Iridium and its alloys; Items of jewellery; Ivory jewellery; Ivory [jewellery, jewelry (Am.)]; Ivory jewelry; Jade; Jade [jewellery]; Jades; Jet; Jet (Ornaments of -); Jet, unwrought or semi-wrought; Jewel cases; Jewel cases [fitted]; Jewel cases of precious metal; Jewel chains; Jewel pendants; Jewellery; Jewellery articles; Jewellery being articles of precious metals; Jewellery being articles of precious stones; Jewellery boxes; Jewellery boxes and watch boxes; Jewellery boxes [fitted]; Jewellery boxes of precious metal; Jewellery boxes of precious metals; Jewellery brooches; Jewellery cases; Jewellery cases [caskets]; Jewellery cases [caskets] of precious metal; Jewellery cases [caskets or boxes]; Jewellery cases [fitted]; Jewellery cases of precious metal; Jewellery caskets; Jewellery caskets of precious metal; Jewellery chain; Jewellery chain of precious metal for anklets; Jewellery chain of precious metal for bracelets; Jewellery chain

of precious metal for necklaces; Jewellery chains; Jewellery charms; Jewellery coated with precious metal alloys; Jewellery coated with precious metals; Jewellery containing gold; Jewellery fashioned from bronze; Jewellery fashioned from non-precious metals; Jewellery fashioned of cultured pearls; Jewellery fashioned of precious metals; Jewellery fashioned of semi-precious stones; Jewellery findings; Jewellery foot chains; Jewellery for personal adornment; Jewellery for personal wear; Jewellery hat pins; Jewellery in non-precious metals; Jewellery in precious metals; Jewellery in semi-precious metals; Jewellery in the form of beads; Jewellery, including imitation jewellery and plastic jewellery; Jewellery incorporating diamonds; Jewellery incorporating pearls; Jewellery incorporating precious stones; Jewellery items; Jewellery made from gold; Jewellery made from silver; Jewellery made of bronze; Jewellery made of crystal; Jewellery made of crystal coated with precious metals; Jewellery made of glass; Jewellery made of non-precious metal; Jewellery made of plastics; Jewellery made of plated precious metals; Jewellery made of precious metals; Jewellery made of precious stones; Jewellery made of semi-precious materials; Jewellery of precious metals; Jewellery of yellow amber; Jewellery (Paste -); Jewellery plated with precious metals; Jewellery products; Jewellery rolls; Jewellery rope chain for anklets; Jewellery rope chain for bracelets; Jewellery rope chain for necklaces; Jewellery stones; Jewellery; Jewelry; Jewelry boxes; Jewelry boxes not of metal; Jewelry boxes, not of metal; Jewelry boxes, not of precious metal; Jewelry boxes of metal; Jewelry boxes of precious metal; Jewelry boxes of precious metals; Jewelry brooches; Jewelry cases; Jewelry cases [caskets]; Jewelry cases [caskets] of precious metal; Jewelry cases [caskets or boxes]; Jewelry cases not of precious metal; Jewelry cases of precious metal; Jewelry caskets; Jewelry caskets of precious metal; Jewelry chains; Jewelry charms; Jewelry charms in

precious metals or coated therewith; Jewelry clips for adapting pierced earrings to clip-on earrings; Jewelry findings; Jewelry for the head; Jewelry guard chains; Jewelry hat pins; Jewelry hatpins; Jewelry of yellow amber; Jewelry organizer cases; Jewelry organizer rolls for travel; Jewelry (Paste -) [costume jewelry]; Jewelry pins for use on hats; Jewelry rolls; Jewelry rolls for storage; Jewelry rolls for travel; Jewelry stickpins; Jewels; Key chain tags; Key chains; Key chains as jewellery [trinkets or fobs]; Key chains for use as jewellery; Key chains for use as jewelry; Key chains of precious metal; Key chains [split rings with trinket or decorative fob]; Key chains [trinkets or fobs]; Key charms coated with precious metals; Key charms of precious metals; Key charms [trinkets or fobs]; Key fobs; Key fobs made of precious metal; Key fobs of precious metals; Key fobs [rings] coated with precious metal; Key holders of precious metals; Key holders [trinkets or fobs]; Key rings; Key rings and key chains, and charms therefor; Key rings of precious metal; Key rings of precious metals; Key rings [split rings with trinket or decorative fob]; Key rings [trinkets or fobs]; Key rings [trinkets or fobs] of precious metal; Key tags [trinkets or fobs]; Keyrings; Lapel badges of precious metal; Lapel pins; Lapel pins [jewellery]; Lapel pins [jewelry]; Lapel pins of precious metals [jewellery]; Leather jewelry boxes; Leather watch straps; Links (Cuff -); Lockets; Lockets [jewellery]; Lockets [jewellery, jewelry (Am.)]; Lockets [jewelry]; Man-made pearls; Mantle clocks; Marcassites; Master clocks; Mechanical watch oscillators; Mechanical watches; Mechanical watches with automatic winding; Mechanical watches with manual winding; Medallions; Medallions [jewellery, jewelry (Am.)]; Medallions made of non-precious metals; Medallions made of precious metals; Medals; Medals coated with precious metals; Medals made of precious metals; Meditation beads; Metal badges for wear [precious metal]; Metal expanding watch bracelets; Metal key chains;

Metal key fobs; Metal watch bands; Metal wire [precious metal]; Metal works of art [precious metal]; Miniature clocks; Miniature figurines [coated with precious metal]; Misbaha [prayer beads]; Model animals [ornaments] coated with precious metal; Model animals [ornaments] made of precious metal; Model figures [ornaments] coated with precious metal; Model figures [ornaments] made of precious metal; Monetary coin sets for collecting purposes; Movements for clocks and watches; Movements for watches and clocks; Musical jewelry boxes; Natural gem stones; Natural pearls; Neck chains; Necklace charms; Necklaces; Necklaces [jewellery]; Necklaces [jewellery, jewelry (Am.)]; Necklaces [jewelry]; Necklaces of precious metal; Necktie fasteners; Non-leather watch straps; Non-monetary coins; Objet d'art made of precious metals; Objet d'art made of precious stones; Objet d'art of enamelled gold; Objet d'art of enamelled silver; Olivine [gems]; Olivine [peridot]; Opal; Opals; Ornamental figurines made of precious metal; Ornamental hat pins; Ornamental lapel pins; Ornamental pins; Ornamental pins made of precious metal; Ornamental sculptures made of precious metal; Ornaments for clothing [of precious metal]; Ornaments (Hat -) of precious metal; Ornaments [jewellery]; Ornaments [jewellery, jewelry (Am.)]; Ornaments, made of or coated with precious or semi-precious metals or stones, or imitations thereof; Ornaments of jet; Ornaments (Shoe -) of precious metal; Ornaments [statues] made of precious metal; Oscillators for clocks; Oscillators for timepieces; Oscillators for watches; Osmium; Osmium alloys; Osmium and its alloys; Palladium; Palladium alloys; Palladium and its alloys; Parts and fittings for chronometric instruments; Parts and fittings for horological instruments; Parts and fittings for jewellery; Parts and fittings for watches; Parts for clocks; Parts for clockworks; Parts for watches; Paste jewellery; Paste jewellery [costume jewelry (Am.)]; Paste jewellery [costume jewelry [Am.]]; Paste

jewelry; Paste jewelry [costume jewelry]; Pearl; Pearls; Pearls [jewellery]; Pearls [jewellery, jewelry (Am.)]; Pearls [jewelry]; Pearls made of ambroid [pressed amber]; Pendant watches; Pendants; Pendants for watch chains; Pendants [jewellery]; Pendants [jewelry]; Pendulum clocks; Pendulums [clock and watch making]; Pendulums [clock- and watchmaking]; Peridot; Personal jewellery; Personal ornaments of precious metal; Pet jewelry; Pewter jewellery; Pierced earrings; Pins being jewellery; Pins being jewelry; Pins [jewellery]; Pins [jewellery, jewelry (Am.)]; Pins [jewelry]; Pins (Ornamental -); Pins (Tie -); Plastic bracelets in the nature of jewelry; Plastic costume jewellery; Platinum; Platinum alloy ingots; Platinum alloys; Platinum and its alloys; Platinum ingots; Platinum jewelry; Platinum [metal]; Platinum rings; Platinum watches; Pocket watches; Prayer beads; Precious and semi-precious gems; Precious and semi-precious stones; Precious gemstones; Precious jewellery; Precious jewels; Precious metal alloys; Precious metal alloys [other than for use in dentistry]; Precious metal trophies; Precious metals; Precious metals and their alloys; Precious metals, unwrought or semi-wrought; Precious stones; Presentation boxes for gemstones; Presentation boxes for horological articles; Presentation boxes for jewellery; Presentation boxes for jewelry; Presentation boxes for watches; Presentation cases for horological articles; Prize cups of precious metals; Processed or semi-processed precious metals; Quartz clocks; Quartz watches; Retractable key chains; Retractable key rings; Retractable key rings [trinkets or fobs]; Rhinestones for making jewelry; Rhodium; Rhodium alloys; Rhodium and its alloys; Ring bands [jewellery]; Ring holders of precious metal; Rings being jewellery; Rings coated with precious metals; Rings [jewellery]; Rings [jewellery, jewelry (Am.)]; Rings [jewellery] made of non-precious metal; Rings [jewellery] made of precious metal; Rings [jewelry]; Rings of

precious metal; Rings [trinket]; Rope chain [jewellery] made of common metal; Rope chain made of precious metal; Rosaries; Ruby; Ruthenium; Ruthenium alloys; Ruthenium and its alloys; Sapphire; Sapphires; Sardonyx; Sardonyx [unwrought]; Scale models [ornaments] of precious metal; Scarf clips being jewelry; Sculptures made from precious metal; Sculptures made of precious metal; Sculptures of precious metal; Semi-finished articles of precious metals for use in the manufacture of jewellery; Semi-finished articles of precious stones for use in the manufacture of jewellery; Semi-precious articles of bijouterie; Semi-precious gemstones; Semi-precious stones; Semi-worked precious metals; Semi-wrought precious stones and their imitations; Ship's chronometers; Shoe jewellery; Shoe jewelry; Shoe ornaments of precious metal; Signet rings; Silver; Silver alloy ingots; Silver alloys; Silver and its alloys; Silver bracelets; Silver bullion; Silver earrings; Silver ingots; Silver necklaces; Silver objets d'art; Silver rings; Silver thread; Silver thread [jewellery]; Silver thread [jewellery, jewelry (Am.)]; Silver thread [jewelry]; Silver, unwrought or beaten; Silver watches; Silver-plated bracelets; Silver-plated earrings; Silver-plated necklaces; Silver-plated rings; Small clocks; Small jewellery boxes of precious metals; Small jewelry boxes, not of precious metal; Solar watches; Spinel [precious stones]; Split rings of precious metal for keys; Sports watches; Springs (Watch -); Spun silver [silver wire]; Square gold chain; Stands for clocks; Statues and figurines, made of or coated with precious or semi-precious metals or stones, or imitations thereof; Statues of precious metal; Statues of precious metal and their alloys; Statues of precious metal of religious icons; Statues of precious metals; Statuettes made of semi-precious metals; Statuettes made of semi-precious stones; Statuettes of precious metal; Statuettes of precious metal and their alloys; Sterling silver jewellery; Stop watches; Stopwatches; Straps for watches; Straps for wrist

watches; Straps for wristwatches; Sun dials; Sundials; Synthetic precious stones; Synthetic stones [jewellery]; Table clocks; Table watches; Threads of precious metal; Threads of precious metal [jewellery]; Threads of precious metal [jewellery, jewelry (Am.)]; Threads of precious metal [jewelry]; Threads of precious metals; Tiaras; Tie bars; Tie bars of precious metals; Tie chains of precious metal; Tie clasps of precious metals; Tie clips; Tie clips of precious metal; Tie fasteners; Tie holders of precious metal; Tie pins; Tie tacks; Tie-pins of precious metal; Time clocks [master clocks] for controlling other clocks; Time instruments; Timekeeping instruments; Timekeeping systems for sports; Timepieces; Timing clocks; Topaz; Tourmaline gemstones; Travel clocks; Trinkets coated with precious metal; Trinkets [jewellery]; Trinkets [jewellery, jewelry (Am.)]; Trinkets [jewelry]; Trinkets of bronze; Trophies coated with precious metal alloys; Trophies coated with precious metals; Trophies made of precious metal alloys; Trophies made of precious metals; Trophies of precious metals; Unwrought agate; Unwrought and semi-wrought precious stones and their imitations; Unwrought precious stones; Unwrought sardonyx; Unwrought silver; Unwrought silver alloys; Wall clocks; Wall decorations of precious metal; Watch and clock hands; Watch and clock springs; Watch bands; Watch boxes; Watch boxes [presentation]; Watch bracelets; Watch cases; Watch cases [parts of watches]; Watch casings; Watch chains; Watch clasps; Watch crowns; Watch crystals; Watch dials; Watch faces; Watch fobs; Watch glasses; Watch hands; Watch movements; Watch parts; Watch pouches; Watch springs; Watch straps; Watch straps made of metal or leather or plastic; Watch straps of nylon; Watch straps of plastic; Watch straps of polyvinyl chloride; Watch straps of synthetic material; Watch winders; Watchbands; Watches; Watches and clocks; Watches bearing insignia; Watches containing a game function; Watches containing an

electronic game function; Watches for nurses; Watches for outdoor use; Watches for sporting use; Watches incorporating a memory function; Watches incorporating a telecommunication function; Watches made of gold; Watches made of plated gold; Watches made of precious metals; Watches made of precious metals or coated therewith; Watches made of rolled gold; Watches with the function of wireless communication; Watches with wireless communication function; Watchmaking pendulums; Watchstraps; Watchstraps made of leather; Wedding bands; Wedding rings; Wire of precious metal [jewellery]; Wire of precious metal [jewellery, jewelry (Am.)]; Wire of precious metal [jewelry]; Wire thread of precious metal; Women's jewelry; Women's watches; Wooden bead bracelets; Wooden jewellery boxes; Works of art of precious metal; Wrist bands [charity]; Wrist straps for watches; Wrist watch bands; Wrist watches; Wristbands [charity]; Wristlet watches; Wristlets [jewellery]; Wristwatches; Wristwatches with GPS apparatus; Wristwatches with GPS feature; Wristwatches with pedometer feature; Wristwatches with pedometers.

85. The application will proceed to registration, subject to appeal, in respect of the following goods:

Class 14 Ceramic discs for use as tokens of value; Coins; Collectable monetary coin sets; Collectible coins; Commemorative coins; Commemorative shields; Commemorative shields of precious metal; Copper tokens; Grave markers of precious metal; Gold bullion coins; Gold coins; Imitation leather key chains; Imitation leather key rings; Key fobs, not of metal; Key fobs of common metal; Key fobs of imitation leather; Key rings, not of metal; Key rings of leather; Keyrings of common metal; Leather key fobs; Leather key rings; Metal tokens used for mass transit; Monetary coin sets for collecting purposes; Non-metal key rings; Non-

monetary coins; Precious metal trophies; Prize cups of precious metals; Tokens (Copper -); Trophies coated with precious metal alloys; Trophies coated with precious metals; Trophies made of precious metal alloys; Trophies made of precious metals; Trophies of precious metals.

86. The applicants' uncontested Class 18 and Class 25 goods also proceed to registration.

COSTS

87. The opponents have been successful in respect of the overwhelming majority of the goods that they have opposed. The opponents are unrepresented and no Cost Pro Forma has been received, so they are only entitled to a costs award based on the official fee for filing the opposition. I award the opponents the following:

Official fees:	£100
Total:	£100

88. I order Shabnam Ahmed and Melu Monkey Limited, being jointly and severally liable, to pay Christopher John Heath and Katrina Angela Nickell the sum of £100. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 9th day of September 2021

JOHN WILLIAMS
For the Registrar