

O-912-22

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK REGISTRATION NO. 3552152 FOR**

**OLIVIA BROWN**

**IN THE NAME OF IEVA STELINGYTE**

**AND**

**AN APPLICATION FOR INVALIDATION**

**UNDER NO. 504078**

**BY OLIVIA BROWN**

## Background and pleadings

1. Ieva Stelingyte (“the proprietor”) owns the trade mark shown on the cover page of this decision.
2. The registration covers goods in Class 14. A list of the goods covered by the registration is provided in the annex of this decision.
3. The application to register the mark was filed on 5 November 2020, and it was entered in the register on 19 March 2021.
4. Olivia Brown (“the applicant”) applied for a declaration of invalidity against all the goods in the registration by filing a form TM26(l) based on section 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Section 5(4)(a) is relevant in invalidity proceedings under section 47(2)(b) of the Act.
5. Under section 5(4)(a), the applicant claims goodwill in the sign OLIVIA BROWN JEWELLERY. The applicant further claims that she first used the sign as early as May 2012 throughout the UK and in particular the South East of England. The goodwill is claimed in respect of jewellery, jewellery design services and retail services in relation to jewellery. Consequently, the applicant submits that she is entitled to prevent the use of the contested mark under the law of passing off.
6. The proprietor filed a counterstatement denying the grounds of invalidation.
7. The applicant is represented by Stevens & Bolton LLP and the proprietor is unrepresented. Both parties filed evidence. None of the parties requested a hearing. I make this decision after a careful reading of all the papers filed by the parties.
8. Although the UK has left the European Union (“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 Act relied upon in these proceedings are derived

from an EU Directive. That is why this decision continues to refer to EU trade mark law.

## **Evidence**

9. The applicant's evidence comes in the form of 2 witness statements of Ms Olivia Brown together with 130 exhibits. The witness statements are dated 7 March 2022 and 15 June 2022, respectively. Much of the applicant's evidence concerns the proprietor's trading activities. There are also a large number of exhibits that are dated after the application filing date of the proprietor's mark. The proprietor's evidence comes in the form of a witness statement of the proprietor dated 5 May 2022, together with 10 exhibits. I have considered the parties' evidence and will refer to it where appropriate in the decision.

## **Section 5(4)(a)**

10. Section 5(4)(a) of the Act reads as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

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

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

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

12. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

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

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

13. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, as the Appointed Person, endorsed the registrar’s assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

“43. In *SWORDERS TM O-212-06* Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

‘Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the

applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.’ ”

14. The proprietor gives evidence that she started using the trade mark since 5 November 2020 and recorded a turnover of over £120,000 during 1 December 2020 – 5 May 2022.<sup>1</sup> As the proprietor does not claim to have used the mark before 5 November 2020, i.e., the application date of the contested mark, the relevant date for the purpose of this proceeding is 5 November 2020 (“relevant date”).

### Goodwill

15. The concept of goodwill has been described as “the benefit and advantages of the good name, reputation and connection of a business” and “the attractive force which brings in custom”.<sup>2</sup>

16. The applicant gives evidence that she sells bespoke hand-made jewellery under the sign Olivia Brown Jewellery since 2012.<sup>3</sup> The products are advertised and sold online on the applicant’s websites, namely [www.oliviabrownjewellery.co.uk](http://www.oliviabrownjewellery.co.uk) and [www.oliviabrownjewellery.com](http://www.oliviabrownjewellery.com) since 2012.<sup>4</sup> For commissioned works, the customers contact the applicant by completing a contact form on the applicant’s websites.<sup>5</sup>

17. The applicant also advertises her goods on Facebook and Instagram social media websites. The Facebook account under the username Olivia Brown Jewellery and Instagram accounts under the username ‘@oliviabrownjewellery’ were created on 18 November 2018 and 15 January 2020, respectively. The

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<sup>1</sup> Proprietor’s witness statement, para 2 and Exhibits OLB06 & 07

<sup>2</sup> House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217

<sup>3</sup> Witness statement para 6.

<sup>4</sup> *Ibid*, para 6.

<sup>5</sup> *Ibid*, para 30 and 31.

applicant claims to have regularly posted pictures of jewellery on her social media websites since the accounts were created.<sup>6</sup>

18. The applicant has included a number of testimonials from her clients about their experience of purchasing jewellery from the applicant. The testimonials appear to have been obtained for the purposes of the current proceedings. Most testimonials are titled “to whom it may concern” whereas some are merely headed as testimonials. There are multiple concerns about the testimonials filed. In a claim based on passing off, the question before me is whether the applicant could have prohibited the proprietor’s use of the mark as at the relevant date. Therefore, sales recorded after the relevant date is irrelevant to the issues under consideration. I also discount the testimonials where there is an inconsistency in the information provided. For example, some of the clients have given testimonials that they have been customers of the applicant’s business since 2007, while the applicant claims to have started the business under the sign only in 2012.<sup>7</sup> For me to give proper consideration to the remaining testimonials, those must have been filed in proper evidential form, for example, in the form of a witness statement. In the absence of witness statements, I attribute only a weak probative value to that information provided by the applicant’s clients.

19. The applicant’s evidence is that between September 2020 – November 2020, the applicant’s websites had 2,484 visits and 11,410 hits. Although the applicant has provided only the data for 3 months from the relevant date, I note here that the applicant’s websites primarily targeted UK consumers; one of the websites has a ‘.co.uk’ top-level domain name. Taking into account the applicant’s evidence that her products were sold mainly through those websites, it is reasonable to infer that at least a significant proportion of the visits were likely to have been from users in the UK.

20. The applicant claims to have paid for Facebook marketing and provides a copy of the ‘account quick report’, which shows some details of the marketing

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<sup>6</sup> Ibid para 9.

<sup>7</sup> Exhibit OB25

expenditure on Facebook. Although the amount shown as spent during the relevant period is underwhelming, I note from the applicant's unchallenged statement that numerous clients found out about the applicant's business as a result of the promotion of the sign on Google and social media. In this regard, I also note that the applicant's business has grown over the years. In 2013, the applicant recorded revenue of £28,812 which rose to £82,702 in 2019.<sup>8</sup> Although, the increase in revenue is not huge, sales relied upon is clearly more than trivial. In *Smart Planet Technologies, Inc. v Rajinda Sharm* (RECUP)<sup>9</sup>, it was decided that business with a more-than-trivial goodwill can protect signs which are distinctive of that business.

21. The applicant has provided a list of customers since June 2019. It shows that most of the applicant's customers are based in Hampshire, while others are from locations such as Norfolk, Devon and London.<sup>10</sup> In its pleadings, the applicant claims goodwill throughout the UK and, in particular South East of England. While I note that the applicant has a decent client base in Hampshire, the type of goods and services the applicant provides are not those types which are limited to a particular geographic location like a single restaurant. The applicant offers its goods and services online and has clients based in geographical areas extending beyond South East of England. In those circumstances, I prepared to accept that the applicant's goodwill in the business extends throughout the UK. In any case, even if the goodwill were localised, this does not prevent the claim from succeeding since the proprietor's registration confers a UK-wide coverage which, notionally, may be used in the same geographic area. I also note that some of the customers are repeat customers.<sup>11</sup>

22. The applicant has not provided a breakdown figure for me to ascertain how much of the sales related to commissioned goods or goods purchased off the website/social media. Bearing in mind the applicant's statement that majority of

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<sup>8</sup> Exhibit OB20

<sup>9</sup> BL O/304/20

<sup>10</sup> Exhibit OB23

<sup>11</sup> Exhibit OB25

her business relates to commissioned works,<sup>12</sup> it is reasonable to infer that at least some proportion of the revenue, likely to be more than nominal, must have been through the sale of goods. The sales shown were in respect of types of jewellery such as necklaces, rings, studs and earrings. I am of the view that sufficient types of jewellery are shown for the goodwill to cover jewellery as a whole. However, nothing in the evidence indicate that the applicant provides retail services in relation to jewellery. Merely selling goods is not a service for which a trade mark may be protected in class 35.<sup>13</sup> I see no reason why that reasoning should not apply in the present case. Taking the evidence in round, I am of the view the applicant has protectable goodwill in her business in relation to jewellery and jewellery design services, and that the sign is distinctive of that business.

#### Misrepresentation and damage

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

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

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

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148 . The necessity for a substantial number is brought out also in *Saville*

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<sup>12</sup> Witness Statement, para 7 and Exhibit OB32

<sup>13</sup> *Apple Inc. v Deutsches Patent- und Markenamt*, C-421/13.

*Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“.... for my part, I think that references, in this context, to “more than de minimis ” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

24. I will now turn to compare the proprietor's goods with the goods and services for which the applicant has demonstrated goodwill and group together the proprietor's goods where appropriate.<sup>14</sup> The proprietor's goods are listed below:

Agate as jewellery; Agates; Amber pendants being jewellery; Amberoid pendants being jewellery; Amulets; Amulets being jewellery; Amulets [jewellery]; Amulets [jewellery, jewellery (Am.)]; Amulets [jewellery]; Ankle bracelets; 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; Bangle bracelets; Ornamental pins; Ornamental pins made of precious metal; 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];

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<sup>14</sup> See *Separode Trade Mark* BL O-399-10 para 5.

Bracelets for watches; Bracelets [jewellery]; Bracelets [jewellery, jewellery (Am.)]; Bracelets [jewellery]; Bracelets made of embroidered textile [jewellery]; Bracelets made of embroidered textile [jewellery]; Wrist bands [charity]; Wristbands [charity]; 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; Ornamental hat pins; Bracelets made of rubber or silicone with pattern or message; Bracelets of precious metal; Bridal headpieces in the nature of tiaras; Brooches being jewellery; Brooches [jewellery]; Brooches [jewellery, jewellery (Am.)]; Necktie fasteners; Brooches [jewellery]; Cameos [jewellery]; 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; Chain mesh of precious metals [jewellery]; Chain mesh of semi-precious metals; Chains for watches; Chains [jewellery]; Chains [jewellery, jewellery (Am.)]; Chains [jewellery]; Ornaments [jewellery]; Chains made of precious metals [jewellery]; Chains of precious metals; Charms; Charms for jewellery; Charms for jewellery; Charms for key chains; Charms for key rings; Charms [jewellery]; Charms [jewellery, jewellery (Am.)]; Charms [jewellery] of common metals; Charms [jewellery]; Children's jewellery; Choker necklaces; Chokers; Cloisonne jewellery; Cloisonné jewellery; Cloisonné jewellery [jewellery (Am.)]; Signet rings; Split rings of precious metal for keys; Spun silver [silver wire]; Square gold chain; Cloisonné jewellery; Corporate recognition jewellery; Costume jewellery; Costume jewellery; Crosses [jewellery]; Crucifixes as jewellery; Crucifixes as jewellery; Clip earrings; Clips of silver [jewellery]; Clips (Tie -); Decorative articles [trinkets or jewellery] for personal use; Diadems; Jewellery brooches; Decorative brooches [jewellery]; Decorative pins [jewellery]; Diamond jewellery; 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; Escapements; Eternity rings; Facial jewellery; Fake jewellery; Fashion jewellery; Finger rings; 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, jewellery (Am.)]; Gold thread jewellery; Gold thread [jewellery]; Gold-plated earrings; Gold-plated necklaces; Gold-plated rings; Hat jewellery; Hat jewellery; Hat ornaments of precious metal; Holiday ornaments [figurines] of precious metal, other than tree ornaments; Hoop earrings; Identification bracelets [jewellery]; Identification bracelets of precious metal [jewellery]; Imitation jewellery; Imitation jewellery ornaments; Imitation jewellery; Items of jewellery; Ivory jewellery; Ivory [jewellery, jewellery (Am.)]; Ivory jewellery; Jewellery brooches; Jewellery clips for adapting pierced earrings to clip-on earrings; Jewellery findings; Misbaha [prayer beads]; Jewellery for the head; Jewellery guard chains; Jewellery hat pins; Jewellery hatpins; Jewellery of yellow amber; Jewellery stickpins; Jewels; Key chains as jewellery [trinkets or fobs]; Key chains for use as jewellery; Key chains for use as jewellery; Lapel pins; Lapel pins [jewellery]; Lapel pins [jewellery]; Lapel pins of precious metals [jewellery]; Locketts; Locketts [jewellery]; Locketts [jewellery, jewellery (Am.)]; Locketts [jewellery]; Medallions; Medallions [jewellery, jewellery (Am.)]; Neck chains; Necklace charms; Necklaces; Necklaces [jewellery]; Necklaces [jewellery, jewellery (Am.)]; Necklaces [jewellery]; Necklaces of precious metal; Ornaments [jewellery, jewellery (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; Paste jewellery; Paste jewellery [costume jewellery (Am.)]; Paste jewellery [costume jewellery [Am.]]; Paste jewellery; Paste jewellery [costume jewellery]; Pendants; Pendants [jewellery]; Pendants [jewellery]; Pearl; Pearls; Pearls [jewellery]; Pearls [jewellery, jewellery (Am.)]; Meditation beads; Personal jewellery; Pierced earrings; Pearls [jewellery]; Pet jewellery; Pewter jewellery; Pins being jewellery; Pins being jewellery; Pins [jewellery]; Pins [jewellery, jewellery (Am.)]; Pins [jewellery]; Pins (Ornamental -); Pins (Tie -); Plastic bracelets in the nature of jewellery; Plastic costume jewellery; Platinum rings; Platinum jewellery; Precious jewellery; Precious jewels; Rings being jewellery; Rings coated with precious metals; Rings [jewellery]; Rings [jewellery, jewellery (Am.)]; Rings [jewellery] made of non-precious metal; Rings [jewellery] made of

precious metal; Rings [jewellery]; Rings of precious metal; Rings [trinket]; Trinkets [jewellery]; Trinkets [jewellery, jewellery (Am.)]; Trinkets [jewellery]; Wedding bands; Wedding rings; Wire of precious metal [jewellery]; Wire of precious metal [jewellery, jewellery (Am.)]; Wire of precious metal [jewellery]; Wire thread of precious metal; Women's jewellery; Wooden bead bracelets; Scarf clips being jewellery; Shoe jewellery; Shoe jewellery; Shoe ornaments of precious metal; Silver necklaces; Silver objets d'art; Silver rings; Silver thread; Silver thread [jewellery]; Silver thread [jewellery, jewellery (Am.)]; Silver thread [jewellery]; Silver watches; Silver-plated bracelets; Silver-plated earrings; Silver-plated necklaces; Silver-plated rings; Wristlets [jewellery]; Personal ornaments of precious metal; Threads of precious metal [jewellery, jewellery (Am.)]; Threads of precious metal [jewellery]; Rope chain [jewellery] made of common metal; Rope chain made of precious metal; Synthetic stones [jewellery]; Threads of precious metal; Threads of precious metal [jewellery]; Threads of precious metals; Ring bands [jewellery]; Ring holders of precious metal; Tiaras; Charity bracelets; Silver bracelets; Jade; Jade [jewellery]; Jades; Jet; Jet (Ornaments of -); Jewel chains; Flexible wire bands for wear as a bracelet; Jewel pendants; Jewellery; Jewellery articles; Jewellery being articles of precious metals; Jewellery being articles of precious stones; Jewellery chain; Jewellery chain of precious metal for anklets; Jewellery chain of precious metal for bracelets; Jewellery (Paste -) [costume jewellery]; Jewellery pins for use on hats; Links (Cuff -); 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; Rosaries; Chaplets; Decorative pins of precious metal; 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; Ornaments (Hat -) of precious metal and; Clothing ornaments of precious metals; 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; Jewellery; Jewellery chains; Jewellery charms; Jewellery charms in precious metals or coated therewith; Sterling silver jewellery;

25. The above-mentioned goods are various types of jewellery. As the applicant has demonstrated goodwill in jewellery at large, I find that the conflicting goods are identical.

Clasps for jewellery; Clasps for jewellery; Closures for necklaces; Beads for making jewellery; Parts and fittings for jewellery

26. The above-mentioned goods are parts and fittings for jewellery. These goods are similar to jewellery to a medium degree due to the shared channels of trade and users. The goods are also complementary because the proprietor's goods are important for the applicant's goods and, the average consumer is likely to think that the goods originate from the same undertaking.<sup>15</sup>

Fancy keyrings of precious metals; Decorative key rings; Key chain tags; Key chains; 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; Retractable key chains; Retractable key rings; Retractable key rings [trinkets or fobs]; Key

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<sup>15</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-325/06

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; Fobs for keys;

27. To my mind, key rings/chains/fobs used as decorative items are unlikely to be used as jewellery. However, these goods are likely to be sold through the same trade channels as the applicant's jewellery. The users are also likely to coincide. On that basis, I find that the proprietor's goods listed above are similar to a medium degree to the applicant's goods.

Key fobs, not of metal; Key fobs of common metal; Metal key chains; Key fobs of imitation leather; Key rings, not of metal; Key rings of leather; Leather key fobs; Leather key rings; Non-metal key rings; Metal key fobs; Keyrings of common metal; Imitation leather key chains; Imitation leather key rings

28. The above-mentioned goods are unlikely to be sold through the same trade channels as the applicant's goods. However, the purpose and method of use of those goods are the same as key rings used as jewellery. The goods may be in competition; however, they are not complementary. Considering these factors, I find that the proprietor's goods are similar to a low degree to the applicant's jewellery.

Boxes for cufflinks; Boxes for tie-pins; Cases adapted to contain items of jewellery; Cases [fitted] for jewels; Cases for jewels; Boxes of precious metal; Fitted covers for jewellery rings to protect against impact, abrasion, and damage to the ring's band and stones; Fitted jewellery pouches; Decorative boxes made of precious metal; Musical jewellery boxes; Presentation boxes for jewellery; Presentation boxes for jewellery; Jewellery organizer cases; Jewel cases; Jewel cases [fitted]; Jewel cases of precious metal; Jewellery boxes; Jewellery boxes Jewellery boxes [fitted]; Jewellery boxes of precious metal; Jewellery boxes of precious metals; Jewellery cases; Jewellery organizer rolls for travel; Jewellery rolls; Jewellery rolls for storage; Jewellery rolls for travel;

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 boxes; Jewellery boxes not of metal; Jewellery boxes, not of metal; Jewellery boxes, not of precious metal; Jewellery boxes of metal; Jewellery boxes of precious metal; Jewellery boxes of precious metals; Jewellery cases; Jewellery cases [caskets]; Jewellery cases [caskets] of precious metal; Jewellery cases [caskets or boxes]; Jewellery cases not of precious metal; Jewellery cases of precious metal; Jewellery caskets; Decorative cuff link covers; Cases of precious metals for jewels; Jewellery caskets of precious metal; Wooden jewellery boxes; Small jewellery boxes of precious metals; Small jewellery boxes, not of precious metal; Leather jewellery boxes;

29. The above-mentioned goods are used to store jewellery. The companies that produce jewellery may also produce cases for storing jewellery. They target the same consumers and have the same distribution channels. For these reasons, I find that the proprietor's goods are similar to the applicant's jewellery to a medium degree.

Alloys of precious metal; Alloys of precious metals; Artificial stones [precious or semi-precious]; Agate [unwrought]; Beads for making jewellery; Busts of precious metal; Busts of precious metals; Cultured pearls; Cut diamonds; Cubic zirconia; Cabochons; Cabochons for making jewellery; Rhinestones for making jewellery; Rhodium; Rhodium alloys; Rhodium and its alloys; Cabochons for making jewellery; Chalcedony; Chalcedony used as gems; 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, unworked or semi-worked; Synthetic precious stones; Gold, unwrought or beaten; Imitation gold; Imitation pearls; Imitation precious stones; bullion; Gold bullion coins; Gold coins; Gold ingots; Ingots of precious metal; Ingots of precious metals; Iridium; Iridium alloys; Processed or semi-processed precious metals; Iridium and its alloys; Metal wire [precious metal]; Natural gem stones; Natural pearls; Pearls made of ambroid [pressed amber]; Jewellery stones; Olivine [gems]; Olivine [peridot];

Opal; Opals; Jet, unwrought or semi-wrought; Peridot; Platinum; Platinum alloy ingots; Platinum alloys; Platinum and its alloys; Platinum ingots; Platinum [metal]; Prayer beads; Precious and semi-precious gems; Precious and semi-precious stones; Precious gemstones; 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; Man-made pearls; Ornaments for clothing [of precious metal]; Topaz; Tourmaline gemstones; Trinkets coated with precious metal; Imitation jet; Trinkets of bronze; Unwrought agate; Unwrought and semi-wrought precious stones and their imitations; Unwrought precious stones; Unwrought sardonyx; Unwrought silver; Unwrought silver alloys; Ruby; Ruthenium; Ruthenium alloys; Ruthenium and its alloys; Marcasite; Osmium; Osmium alloys; Osmium and its alloys; Palladium; Palladium alloys; Palladium 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 articles of bijouterie; 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 earrings; Silver ingots; Silver, unwrought or beaten; Spinel [precious stones]

30. Precious/semi-precious metals, stones, alloys, and gems covered by the contested mark are parts used to make jewellery. They are used by businesses and designers to use as part of the end product. It is not unusual for jewellery shops to also deal in precious metals and stones, and consumers can also take the raw materials to a jeweller for them to be incorporated into an item of jewellery. There is, therefore, an overlap in trade channels and users. Considering these factors, I find that the conflicting goods are similar to a medium degree.

Presentation boxes for gemstones

31. The above-mentioned goods are used to store gemstones. These goods are likely to share channels of trade and users with the applicant's jewellery. For these reasons I find that the conflicting goods are similar to a low degree.

Alarm watches; Apparatus for sports timing [stopwatches]; Apparatus for timing sports events; Automatic watches; Chronographs for use as watches; Chronographs [watches]; Chronographs as watches; watches; watches, electric; watches for pigeon-fanciers; Digital watches with automatic timers; Divers' watches; Diving watches; Dress watches; Electric watches; Electronic watches; Electronically operated movements for watches; Mechanical watches; Mechanical watches with automatic winding; Mechanical watches with manual winding; Pendant watches; Platinum watches; Pocket watches; Quartz watches; Solar watches; Watches; Watches; 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; Wrist watches; Wristlet watches; Wristwatches; Wristwatches with GPS apparatus; Wristwatches with GPS feature; Wristwatches with pedometer feature; Wristwatches with pedometers; Sports watches; Springs (Watch -); Stop watches; Stopwatches; Table watches; Women's watches

32. The above-mentioned goods are different types of watches. Although watches covered by the contested mark are primarily used to see the time, to my understanding, they are also sold and manufactured by producers/sellers of jewellery. Watches and jewellery also coincide in users. Considering these factors, I find that the conflicting goods are similar to a medium degree.

Cases adapted for holding watches; Cases adapted to contain watches; Cases [fitted] for watches; Cases for watchmaking; Cases for watch-making; Cases for watches; Cases for watches; Cases for watches [presentation]; Cases of

precious metals for watches; Presentation boxes for watches; Watch boxes; Watch boxes [presentation]; Watch cases [parts of watches]; Watch cases; Watch pouches; watch boxes

33. The cases/boxes for watches listed above are likely to coincide in trade channels and users with the applicant's jewellery. However, the nature, purpose and method of use of the parties' goods are different. On that basis, I find that the conflicting goods are similar to a low degree.

Bands for watches; Barrels [watchmaking]; Buckles for watchstraps; Chains (Watch -); Wrist straps for watches; Wrist watch bands; Anchors [watch making]; Anchors [watchmaking]; watch hands; Dials [watch making]; Dials [watchmaking]; Dials watchmaking); Dials for watch making; Dials for watchmaking; Dials for watch-making; Dials for watch-making; Dials for watches; Dials (Sun -); Electrically operated movements for watches; Mechanical watch oscillators; Non-leather watch straps; Pendants for watch chains; Faces for watches; Fittings for watches; Movements for watches; Movements for watches; Oscillators for watches; Parts and fittings for watches; Parts for watches; Pendulums [clock and watch making]; Pendulums [clock- and watchmaking]; Watch and clock hands; Watch and clock springs; Watch bands; Watch bracelets; 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; Leather watch straps; Watch straps of plastic; Watch straps of polyvinyl chloride; Watch straps of synthetic material; Watch winders; Watchbands; and Watchmaking pendulums; Watchstraps; Metal expanding watch bracelets; Watchstraps made of leather; Straps for watches; Straps for wrist watches; Straps for wristwatches; Sun dials; Sundials; Metal watch bands

34. The above-mentioned goods are parts and fitting of a watch. These goods are likely to share channels of trade and users with jewellery covered by the applicant's earlier right. However, their nature, purpose and method of use are

different. The goods are neither complementary nor in competition. On that basis, I find that the conflicting goods are similar to a low degree.

Alarm clocks; Atomic clocks; Automobile clocks; Clocks and; Clocks electric; Clocks and; Clocks for world time zones; Clocks having quartz movements; Clocks incorporating ceramics; Clocks incorporating radios; Control clocks; Control clocks [master clocks]; Desk clocks; Digital clocks; Digital clocks being electronically controlled; Digital clocks incorporating radios; Digital clocks with automatic timers; Electric alarm clocks; Electric timepieces; Electrical timepieces; Electronic alarm clocks; Electronic clocks; Electronic timepieces; Electronically operated movements for clocks; Industrial clocks; Floor clocks; Grandfather clocks; Mantle clocks; Master clocks; Miniature clocks; Pendulum clocks; Quartz clocks; Timing clocks; Travel clocks; Wall clocks; clocks; Small clocks; Table clocks; Time clocks [master clocks] for controlling other clocks; Digital time indicators having temperature displays;

35. The above-mentioned goods are various types of clocks. I find that clocks in the contested mark are similar to jewellery to a medium degree. This is because the respective goods are likely to share channels of trade and users but are different in purpose. The goods are not in competition with one another or are complementary in the sense described by the case law<sup>16</sup>.

Cases [fitted] for clocks; Cases for clock; Cases for clock; Cases of precious metals for clocks; Cases for clocks; Clock boxes; Clock cabinets; Clock cases; Clock housings; Cabinets for clocks; Housings for clocks;

36. To my understanding, the above-referenced goods are types of structures which house a clock. These goods are likely to share channels of trade and users with jewellery. However, the nature, purpose and method of use of the proprietor's goods differ from the applicant's goods. Considering these factors,

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<sup>16</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-325/06

I find that the proprietor's goods are similar to a low degree to the applicant's jewellery.

Clock cases being parts of clocks; Clock dials; Clock faces; Clock hands; Clock hands [clock and watch making]; Clock hands [clock- and watchmaking]; Clock mechanisms; Clock movements; Clockmaking pendulums; Clocks and parts therefor; Clockwork movements; Clockworks; Anchors [clock]; Dials [clock]; Dials [clock]; Dials (clockmaking); Dials for clock; Dials for clock; Dials for clock; Dials for clock; Dials for clocks; Dials for horological articles; Electrically operated movements for clocks; Faces for clocks; Hands (Clock -) [clock and watch making]; Hands for clocks; Parts for clocks; Parts for clockworks; Stands for clocks; Barrels [clock and watch making]; Oscillators for clocks; Oscillators for timepieces

37. The contested goods are parts and fittings for clocks. To my mind, these goods are more likely to be sold through specialist shops selling parts of clocks. However, I do not rule out the possibility of these goods also being made available through outlets selling jewellery. The users are also likely to coincide. On that basis, I find that the conflicting goods are similar to a very low degree.

Chronographs for use as timepieces; Chronological instruments; Chronometers; Chronometric apparatus and instruments; Chronometric instruments; Chronometrical instruments; Ship's chronometers; Chronoscopes; Horological articles; Horological instruments; Horological instruments having quartz movements; Horological instruments made of gold; Horological products; Timekeeping instruments; Timekeeping systems for sports; Timepieces; Time instruments

38. The above-mentioned goods are used to measure and record time and includes watches and clocks. Therefore, my findings noted at paragraphs 32 and 35 apply. I find that these goods are similar to the applicant jewellery to a medium degree.

Cases adapted to contain horological articles; Cases [fitted] for horological articles; Cases for chronometric instruments; Cases for horological instruments; Cases of precious metals for horological articles; Faces for chronometric instruments; Faces for horological instruments; Parts and fittings for chronometric instruments; Parts and fittings for horological instruments. Presentation boxes for horological articles; Presentation cases for horological articles

39. These are either cases used to store various chronometric/horological instruments or parts and fittings for those instruments. As I have already found that these instruments include watches and clocks and my findings on cases/parts and fittings of watches and clocks noted at paragraphs 33 and 36 apply. Accordingly, I find that the proprietor's goods are similar to the applicant's jewellery to a low degree.

3D wall art made of precious metal; Action figures (Decorative -) of precious metal; Adhesive wall decorations of precious metal; Desktop statuary made of precious metal; 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; Metal works of art [precious metal]; Miniature figurines [coated with precious metal]; 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; 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; Ornamental figurines made of precious metal; Ornamental sculptures made of precious metal; Ornaments [statues] made of precious metal; Wall decorations of precious metal; Works of art of precious metal; Scale models [ornaments] of precious metal; Sculptures made from precious metal; Sculptures made of precious metal; Sculptures of precious metal; 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;

40. The above-mentioned goods cover decorative items made of precious metals. The channels of trade for these goods are likely to coincide with the applicant's jewellery. The users are also likely to be the same. On that basis, I find that the conflicting goods and services are similar to a low degree.

Badges of precious metal; Medallions made of non-precious metals; Medallions made of precious metals; Medals; Medals coated with precious metals; Medals made of precious metals; Gold medals; Identity plates of precious metal; Insignia of precious metals; Insignias of precious metal; Metal badges for wear [precious metal]; Lapel badges of precious metal; Cloisonne pins.

41. Unlike jewellery, the above-mentioned goods are primarily used to identify a person, rank or denote an achievement. They are worn on the body like jewellery and can be made of the same metals from which jewellery is made and could also be sold through a jeweller. However, these goods are not in competition with jewellery, nor are they complementary. Considering these factors, I find that the proprietor's goods are similar to the applicant's goods to a medium degree.

Coins; Copper tokens; Tokens (Copper -); Collectable monetary coin sets; Collectible coins; Commemorative boxes of precious metal; Commemorative coins; Commemorative medals; Commemorative shields; Commemorative shields of precious metal; Commemorative statuary cups made of precious metal; Monetary coin sets for collecting purposes; Non-monetary coins; 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; Trophies of precious metals;

42. The above-mentioned goods are similar to a low degree to the applicant's goods. This is because the conflicting goods are likely to share channels of trade and users. The goods, however, are not in competition, nor are they complementary.

Ceramic discs for use as tokens of value; Metal tokens used for mass transit

43. These discs represent a monetary value and are likely to be used in shops or car parks, for example. The nature, purpose and method of use of these goods differ from the applicant's goods and services. They do not share channels of trade, nor do they compete. The goods and services are not complementary either. Although the users are likely to be the same, that factor alone cannot lead to a similarity between the conflicting goods and services. Considering these factors, I find that the proprietor's goods are dissimilar to the applicant's goods and services.

Grave markers of precious metal

44. The contested grave markers of precious metal are goods installed for the purpose of identifying the location of a grave and the details of the deceased. Other than the fact that the proprietor's goods are made of precious metal, I do not find any meaningful similarity between the applicant's goods and services and the proprietor's goods. The proprietor's goods are likely to be sold through specialist retailers and are not in competition with the applicant's goods and services. The nature, purpose and method of use of the conflicting goods and services are also different. On that basis, I conclude that the proprietor's grave markers of precious metals are dissimilar to the applicant's goods and services.

45. The contested mark is OLIVIA BROWN and the sign in which the applicant has an earlier right is OLIVIA BROWN JEWELLERY. The coinciding words are OLIVIA BROWN which constitute the entirety of the proprietor's mark. On that basis, I find that the contested mark is highly similar to the applicant's sign.

46. The average consumer for jewellery, watches, clocks and goods made from precious metals is a member of the general public, while precious metals/alloys are likely to be purchased by general public and professionals such as jewellery makers/designers. The attention paid is likely to vary depending on the price and, to some extent, the nature of the goods and the frequency of the purchase. For example, the consumer is likely to pay a high degree of attention while purchasing an engagement ring than costume jewellery, which could be a fairly frequent and inexpensive occurrence. The full range of goods is purchased visually; however, I do not discount an aural aspect of the purchase process. The average consumer of the applicant's services is likely to be a member of the general public. The consumer is likely to pay attention to the quality and type of goods supplied by the service provider. Particular attention is also likely to be paid to customer reviews. These factors suggest that the consumer is likely to pay a medium to a high degree of attention when selecting the service provider.

47. The question of whether the use of the contested mark would amount to a misrepresentation depends on an overall assessment of all relevant factors. No one such factor automatically trumps the others. It is also necessary to keep in mind that passing-off does not require deception amongst all, or even a majority, of the applicant's OLIVIA BROWN JEWELLERY customers. It is sufficient if a substantial number are deceived.<sup>17</sup>

48. The applicant gives evidence of confusion among the consumers between the applicant's sign and the contested mark. The evidence consists of copies of communications the applicant received from people who had mistakenly placed orders for jewellery with the proprietor or contacted the applicant to enquire about orders on jewellery they placed with the proprietor.<sup>18</sup> As the contested mark is identical to the applicant's sign, I am of the view that such confusion is inevitable where the conflicting goods are identical.

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<sup>17</sup> *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473

<sup>18</sup> Exhibits OB69, 70 and 74

49. In respect of those goods which I have found to be similar to a medium or low degree, I am also of the view that the high degree of similarity between the earlier sign and the proprietor's mark is likely to deceive a substantial number of customers. The consumers would think the applicant must have diversified its jewellery business into the sale of accessories such as watches/clocks or goods made of precious metals, for example, which are usually sold through the same undertaking.

50. I have found that the proprietor's ceramic discs for use as tokens of value, metal tokens used for mass transit and grave markers of precious metal are dissimilar to the applicant's goods and services.

51. In *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA), Millet L.J. made the following findings about the lack of a requirement for the parties to operate in a common field of activity, and about the additional burden of establishing misrepresentation and damage when they do not:

“There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff's business. The expression “common field of activity” was coined by Wynn-Parry J. in *McCulloch v. May* (1948) 65 R.P.C. 58, when he dismissed the plaintiff's claim for want of this factor. This was contrary to numerous previous authorities (see, for example, *Eastman Photographic Materials Co. Ltd. v. John Griffiths Cycle Corporation Ltd.* (1898) 15 R.P.C. 105 (cameras and bicycles); *Walter v. Ashton* [1902] 2 Ch. 282 (The Times newspaper and bicycles) and is now discredited. In the *Advocaat* case Lord Diplock expressly recognised that an action for passing off would lie although “the plaintiff and the defendant were not competing traders in the same line of business”. In the *Lego* case Falconer J. acted on evidence that the public had been deceived into thinking that the plaintiffs, who were manufacturers of plastic toy construction kits, had diversified into the manufacture of plastic irrigation equipment for the domestic garden. What the plaintiff in an action for passing off must prove is not the

existence of a common field of activity but likely confusion among the common customers of the parties.

The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration

‘...whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant’:

[...]

In the same case Stephenson L.J. said at page 547:

‘...in a case such as the present the burden of satisfying Lord Diplock's requirements in the *Advocaat* case, in particular the fourth and fifth requirements, is a heavy burden; how heavy I am not sure the judge fully appreciated. If he had, he might not have granted the respondents relief. When the alleged “passer off” seeks and gets no benefit from using another trader's name and trades in a field far removed from competing with him, there must, in my judgment, be clear and cogent proof of actual or possible confusion or connection, and of actual damage or real likelihood of damage to the respondents' property in their goodwill, which must, as Lord Fraser said in the *Advocaat* case, be substantial.’ ”

52. Considering the significant gap as regards the respective fields of activity, it is difficult to see how a misrepresentation would occur in respect of the proprietor's goods discussed above. The distance between the fields of activity is such that I do not think that the consumers are likely to be deceived into thinking that ceramic discs for use as tokens of value, metal tokens used for mass transit and grave markers of precious metal are from or connected in

some way with the applicant. The invalidation action against those goods, therefore, fails.

53. Where I have found misrepresentation, I must now go on to consider if the applicant has suffered, or is likely to suffer, damage as a result of that misrepresentation. Lord Fraser in *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1980] RPC 31 HL, stated that the claimant must show that “he has suffered, or is really likely to suffer, substantial damage to his property in the goodwill”.

54. In *Harrods Limited V Harrodian School Limited*,<sup>19</sup> Millett L.J. described the requirements for damage in passing off cases like this:

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

55. I am of the view that the damage can arise from the diversion of sales and loss of profit. There is also likely to be damage to goodwill if the applicant loses control over the quality of the products sold under the sign. Accordingly, I conclude that the use of the contested mark in relation to all the goods except

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<sup>19</sup> [1996] RPC 697

ceramic discs for use as tokens of value, metal tokens used for mass transit and grave markers of precious metal covered by its specification would amount to passing off.

56. The application for invalidation succeeds partially under section 5(4)(a).

## **Conclusion**

57. The application for invalidation has succeeded partially. The proprietor's mark may remain registered in respect of ceramic discs for use as tokens of value, metal tokens used for mass transit and grave markers of precious metal. The remaining goods covered by the proprietor's registration may hereby declared invalid under section 47(6) of the Act.

## **Costs**

58. The applicant has been more successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. Considering the extent of success, I do not consider it appropriate to reduce the costs the applicant is entitled to. I award costs to the applicant on the following basis:

Preparing statements and considering the proprietor's statement:	£200
Filing evidence and considering the other party's evidence:	£600
Official fee	£200
Total	£1000

59. I, therefore, order Ieva Stelingyte to pay Olivia Brown the sum of £1000. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 19<sup>th</sup> day of October 2022**

**Karol Thomas  
For the Registrar  
The Comptroller-General**

## Annex

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, jewellery (Am.)]; Amulets [jewellery]; 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 jewellery; 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, jewellery (Am.)];Bracelets [jewellery];Bracelets made of embroidered textile [jewellery];Bracelets made of embroidered textile [jewellery]; Bracelets made of rubber or silicone with pattern or message; Bracelets of precious metal; Bridal headpieces in the nature of tiaras; Brooches being jewellery; Brooches [jewellery]; Brooches [jewellery, jewellery (Am.)]; Brooches [jewellery]; Buckles for watchstraps; Busts of precious metal; Busts of precious metals; Cabinets for clocks; Cabochons; Cabochons for making jewellery; Cabochons for making jewellery; Cameos [jewellery]; 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; Ceramic discs for use as tokens of value; Chain mesh of precious metals [jewellery]; Chain mesh of semi-precious metals; Chains for watches; Chains [jewellery]; Chains [jewellery, jewellery (Am.)]; Chains [jewellery]; 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 jewellery; Charms for key chains; Charms for key rings; Charms [jewellery]; Charms [jewellery, jewellery (Am.)]; Charms [jewellery] of common metals; Charms [jewellery]; Children's jewellery; 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 jewellery; 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 [jewellery (Am.)]; Cloisonné jewellery; 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]; Copper tokens; Corporate recognition jewellery; Costume jewellery; Costume jewellery; Crosses [jewellery]; Crucifixes as jewellery; Crucifixes as jewellery; Crucifixes of precious metal, other than jewellery; Crucifixes of precious metal, other than jewellery; 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 jewellery rings to protect against impact, abrasion, and damage to the ring's band and stones; Fitted jewellery 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, jewellery (Am.)]; Gold thread jewellery; Gold thread [jewellery]; Gold, unworked or semi-worked; Gold, unwrought or beaten; Gold-plated earrings; Gold-plated necklaces; Gold-plated rings; Grandfather clocks; Grave markers of precious metal; 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 [jewellery]; Identification bracelets of precious metal [jewelry]; Identity plates of precious metal; Imitation gold; Imitation jet; Imitation jewellery; Imitation jewellery ornaments; Imitation jewellery; Imitation leather key chains; Imitation leather key rings; 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, jewellery (Am.)]; Ivory jewellery; Jewellery clips for adapting pierced earrings to clip-on earrings; Jewellery findings; Jewellery for the head; Jewellery guard chains; Jewellery hat pins; Jewellery hatpins; Jewellery of yellow amber; Jewellery organizer cases; Jewellery organizer rolls for travel; Jewellery (Paste -) [costume jewellery]; Jewellery pins for use on hats; Jewellery rolls; Jewellery rolls for storage; Jewellery rolls for travel; Jewellery 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 jewellery; 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, not of metal; Key fobs of common metal; Key fobs of imitation leather; 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, not of metal; Key rings of leather; 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; Keyrings of common metal; Lapel badges of precious metal; Lapel pins; Lapel pins [jewellery]; Lapel pins [jewellery]; Lapel pins of precious metals [jewellery]; Leather jewellery boxes; Leather key fobs; Leather key rings; Leather watch straps; Links (Cuff -); Locket; Locket [jewellery]; Locket [jewellery, jewellery (Am.)]; Locket [jewellery]; 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, jewellery (Am.)]; Medallions made of non-precious metals; Medallions made of precious metals; Medal; Medal coated with precious metals; Medal made of precious metals; Meditation beads; Metal badges for wear [precious metal]; Metal expanding watch bracelets; Metal key chains; Metal key fobs; Metal tokens used for mass transit; 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 jewellery boxes; Natural gem stones; Natural pearls; Neck chains; Necklace charms; Necklaces; Necklaces [jewellery]; Necklaces [jewellery, jewellery (Am.)]; Necklaces [jewellery]; Necklaces of precious metal; Necktie fasteners; Non-leather watch straps; Non-metal key rings; 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 jewellery (Am.)]; Paste jewellery [costume jewellery [Am.]]; Paste jewellery; Paste jewellery [costume jewellery]; Pearl; Pearls; Pearls [jewellery]; Pearls [jewellery, jewellery (Am.)]; Pearls [jewellery]; Pearls made of ambroid [pressed amber]; Pendant watches; Pendants; Pendants for watch chains; Pendants [jewellery]; Pendants [jewellery]; Pendulum clocks; Pendulums [clock and watch making]; Pendulums [clock- and watchmaking]; Peridot; Personal jewellery; Personal ornaments of precious metal; Pet jewellery; Pewter jewellery; Pierced earrings; Pins being jewellery; Pins being jewellery; Pins [jewellery]; Pins [jewellery, jewellery (Am.)]; Pins [jewellery]; Pins (Ornamental -); Pins (Tie -); Plastic bracelets in the nature of jewellery; 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 jewellery; 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 [jewellery]; Rings of precious metal; Rings [trinket]; Timekeeping instruments; Timekeeping systems for sports; Timepieces; Timing clocks; Tokens (Copper -); Topaz; Tourmaline gemstones; Travel clocks; Trinkets coated with precious metal; Trinkets [jewellery]; Trinkets [jewellery, jewellery (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, jewellery (Am.)]; Wire of precious metal [jewellery]; 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; 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 jewellery; 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 [jewellery]; 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 [jewellery]; 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; 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; Jewellery; Jewellery boxes; Jewellery boxes not of metal; Jewellery boxes, not of metal; Jewellery boxes, not of precious metal; Jewellery boxes of metal; 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 not of precious metal; Jewellery cases of precious metal; Jewellery caskets; Jewellery caskets of precious metal; Jewellery chains; Jewellery charms; Jewellery charms in precious metals or coated therewith.