

O/0063/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00003563030
BY FARID FEYADI TO REGISTER THE FOLLOWING TRADE MARK:**

FRIDA LONDON

IN CLASSES 3 AND 21

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 424279 BY FRIDABABY, LLC**

Background and Pleadings

1. On 2 December 2020, Farid Feyadi ('the Applicant'), filed an application to register the mark shown on the front page of this decision, number UK00003563030. The application was published for opposition purposes in the *Trade Marks Journal* on 5 February 2021. Registration is sought in respect of the following goods:

Class 3:	<i>Fluid creams [cosmetics]; Functional cosmetics; Glitter in spray form for use as a cosmetics; Hair cosmetics; Humectant preparations [cosmetics]; Impregnated cleaning pads impregnated with cosmetics; Liners [cosmetics] for the eyes; Lip cosmetics; Lip stains [cosmetics]; Milks [cosmetics]; Moisturisers [cosmetics]; Mousses [cosmetics]; Multifunctional cosmetics; Nail base coat [cosmetics]; Nail cosmetics; Nail paint [cosmetics]; Nail polish removers [cosmetics]; Nail primer [cosmetics]; Nail tips [cosmetics]; Nail varnish remover [cosmetics]; Natural cosmetics; Night creams [cosmetics]; Non-medicated cosmetics; Non-medicated cosmetics and toiletry preparations; Organic cosmetics; Paper hand towels impregnated with cosmetics; Cosmetics; Cosmetics all for sale in kit form; Cosmetics and cosmetic preparations; Cosmetics containing hyaluronic acid; Cosmetics containing keratin; Cosmetics containing panthenol; Cosmetics for animals; Cosmetics for children; Cosmetics for eye-brows; Cosmetics for eye-lashes; Cosmetics for personal use; Cosmetics for protecting the skin from sunburn; Cosmetics for suntanning; Cosmetics for the treatment of dry skin; Cosmetics for the use on the hair; Cosmetics for use in the treatment of wrinkled skin; Cosmetics for use on the skin; Cosmetics in the form of creams; Cosmetics in the form of eye shadow; Cosmetics in the form of gels; Cosmetics in the form of lotions; Cosmetics in the form of milks; Cosmetics in the form of oils; Cosmetics in the form of powders; Cosmetics in the form of rouge; Cosmetics preparations; Pores tightening mask packs used as cosmetics; Powder compact refills [cosmetics]; Powder</i>
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compacts [cosmetics]; Refill packs for cosmetics dispensers; Self-tanning preparations [cosmetics]; Skin care cosmetics; Skin fresheners [cosmetics]; Skin masks [cosmetics]; Skin moisturizers used as cosmetics; Skin recovery creams [cosmetics]; Skincare cosmetics; Smoothing emulsions [cosmetics]; Solid powder for compacts [cosmetics]; Sun barriers [cosmetics]; Sun block [cosmetics]; Sun blocking lipsticks [cosmetics]; Sun blocking oils [cosmetics]; Sun blocking preparations [cosmetics]; Sun protecting creams [cosmetics]; Sun-tanning preparations [cosmetics]; Suntan lotion [cosmetics]; Suntan oils [cosmetics]; Suntanning oil [cosmetics]; Tanning gels [cosmetics]; Tanning milks [cosmetics]; Tanning oils [cosmetics]; Tanning preparations [cosmetics]; Teeth whitening strips impregnated with teeth whitening preparations [cosmetics]; Temporary tattoo transfers for use as cosmetics; Tissues impregnated with cosmetics; Perfume; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Perfume water; Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfumed oils for skin care; Perfumed potpourris; Perfumed powder; Perfumed powder [for cosmetic use]; Perfumed powders; Perfumed powders [for cosmetic use]; Perfumed sachets; Perfumed soap; Perfumed soaps; Perfumed tissues; Perfumed toilet waters; Perfumed water; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumery, essential oils; Perfumes; Perfumes for cardboard; Perfumes for ceramics; Perfumes for industrial purposes; Perfumes in solid form; Amber [perfume]; Aromatics for perfumes; Bases for flower perfumes; Body deodorants [perfumery]; Cedarwood perfumery; Cushions filled with perfumed substances; Cushions impregnated with perfumed substances; Deodorants for personal use [perfumery]; Essential oils as perfume for laundry purposes; Extracts of flowers [perfumes]; Extracts of flowers being perfumes; Extracts of

	<p><i>perfumes; Flower perfumes (Bases for -); Flowers (Extracts of -) [perfumes]; Fumigation preparations [perfumes]; Ionone [perfumery]; Liquid perfumes; Mint for perfumery; Musk [perfumery]; Natural oils for perfumes; Natural perfumery; Oils for perfumes and scents; Peppermint oil [perfumery]; Room perfume sprays; Room perfumes in spray form; Solid perfumes; Synthetic perfumery; Synthetic vanillin [perfumery]; Vanilla perfumery.</i></p>
Class 21:	<p><i>3D wall art made of terra-cotta; 3D wall art of made of ceramic; 3D wall art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; Abrasive discs for kitchen [cleaning] purposes; Abrasive gloves for scrubbing vegetables; Abrasive instruments for kitchen [cleaning] purposes; Abrasive mitts for scrubbing the skin; Abrasive pads; Abrasive pads for kitchen or domestic purposes; Abrasive pads for kitchen purposes; Abrasive sponges for kitchen [cleaning] use; Abrasive sponges for scrubbing the skin; Aerosol dispensers, not for medical purposes; Air fragrancing apparatus; All-purpose portable household containers; Aluminium bakeware; Aluminium cookware; Aluminium moulds [kitchen utensils]; Aluminum water bottles; Aluminum water bottles, empty; Animal activated animal feeders; Animal activated livestock feeders; Animal activated livestock waterers; Animal bristles [brushware]; Animal grooming gloves; Animal traps; Animal-activated pet feeders; Ant habitats; Ant vivaria; Anti-reflecting glass; Anti-static cloths for household use; Apothecary jars; Apparatus for cleaning teeth and gums using high pressure water for home use; Apparatus for wax-polishing, non-electric; Appliances for removing make-up, electric; Appliances for removing make-up, non-electric; Applicator sticks for applying makeup; Applicator sticks for applying make-up; Applicators for applying eye make-up; Applicators for cosmetics; Aquaria and vivaria; Aquaria (Indoor -); Aquarium covers; Aquarium hoods; Aquarium ornaments; Aquariums; Aromatic oil diffusers, other than</i></p>

reed diffusers; Aromatic oil diffusers, other than reed diffusers, electric and non-electric; Art objects of glass; Articles for cleaning purposes; Articles for the care of clothing and footwear; Artificial nest eggs; Artificial sponges for household purposes; Artworks of glass; Asparagus tongs; Atomisers for household use; Attracting and killing insects (Electric devices for -); Autoclaves, non-electric; Autoclaves (Non-electric -) for household use; Autoclaves, non-electric, for cooking; Autoclaves [pressure cookers], non-electric; Automatic litter boxes for pets; Automatic pet feeders; Automobile oil funnels; Automobile wheel cleaning brushes; Babies' potties; Baby bath tubs; Baby baths; Baby baths, portable; Baby bathtubs; Baby finger toothbrushes; Back scratchers; Bait stations, empty, for feeding rodenticides to rodents; Bakers' tinware; Bakeware; Bakeware [not toys]; Baking containers made of glass; Baking cups of paper; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking dishes made of porcelain; Baking mats; Baking sheets of common metal; Baking tins; Baking trays made of aluminium; Baking utensils; Banana hangers; Barbecue forks; Barbecue mitts; Barbecue tongs; Barbecue turners; Bases for plant pots; Basins; Basins [bowls]; Basins [receptacles]; Baskets for domestic use; Baskets for household purposes; Baskets for waste paper littering; Baskets for waste paper littering for household purposes; Baskets of common metal for domestic use; Baskets of common metal for household use; Basting brushes; Basting spoons; Basting spoons [cooking utensils]; Basting spoons, for kitchen use; Bath brushes; Bath sponges; Bathroom basins [receptacles]; Bathroom glass holder; Bathroom pails; Baths (Baby -), portable; Bathtub brushes; Batter dispensers for kitchen use; Battery operated lint removers; Battery-powered dental flossers; Beaters (Carpet -), not being machines; Beaters, non-electric; Beaters (Non-electric -) for kitchen use; Beer glasses; Beer jugs; Beer mats not of paper or textile; Beer mugs; Beer pitchers; Beer steins; Bento boxes;

Beverage coolers [containers]; Beverage glassware; Beverage stirrers; Beverage urns, non-electric; Beverages (Heat insulated containers for -); Beverageware; Billiard table brushes; Bins (Dust -); Bins for household refuse; Biobased bottles; Biodegradable bottles; Biodegradable bowls; Biodegradable cups; Biodegradable paper pulp-based bowls; Biodegradable paper pulp-based cups; Biodegradable paper pulp-based plates; Biodegradable plates; Biodegradable trays; Biodegradable trays for domestic purposes; Bird baths; Bird baths not being structures; Bird cages; Bird cages for domestic birds; Bird feeders; Bird feeders for feeding birds in the wild; Bird feeders for feeding caged birds; Bird feeders in the nature of containers; Bird feeding tables; Bird repellent devices, not of metal; Birdcages; Biscuit cutters; Blacking brushes; Blenders for food [non-electric]; Blenders, non-electric, for household purposes; Boards (Ironing -); Bobeches; Body cleanser dispensers; Body cleanser holders; Body scrubbing puffs; Body sponges; Bone china tableware [other than cutlery]; Boot brushes; Boot jacks; Boot removers; Boot stretchers; Boot stretchers of wood; Boot trees; Boot trees [stretchers]; Bootjacks; Bota bags; Bottle baskets coated with precious metal; Bottle brushes; Bottle buckets; Bottle cleaning brushes; Bottle coolers; Bottle coolers [receptacles]; Bottle cradles; Bottle gourds; Bottle openers; Bottle openers, electric and non-electric; Bottle openers [hand-operated]; Bottle openers incorporating knives; Bottle pourers; Bottle stands; Bottles; Bottles for pharmaceuticals sold empty; Bottles (Refrigerating -); Bottles, sold empty; Bouquet holders; Bowls; Bowls [basins]; Bowls for candy; Bowls for floral decorations; Bowls for nuts; Bowls for plants; Bowls for sugar candy; Bowls (Glass -); Bowls made of precious metal; Bowls of precious metal; Boxes for biscuits; Boxes for candies; Boxes for dispensing paper serviettes; Boxes for dispensing paper towels; Boxes for holding artificial teeth; Boxes for sweetmeats; Boxes for sweets; Boxes of ceramics; Boxes of china; Boxes of earthenware; Boxes of glass;

Boxes of metal, for dispensing paper towels; Boxes of porcelain; Boxes of precious metal for sweets; Boxes (Soap -); Brandy sniffers; Bread baskets; Bread baskets, domestic; Bread baskets for household purposes; Bread bins; Bread boards; Bread boxes; Bread tongs; Bread-cases [for kitchen use]; Bristles (Animal -) [brushware]; Broom handles; Broom handles, not of metal; Brooms; Brooms for cleaning purposes; Brush goods; Brush holders; Brush making materials; Brushes; Brushes adapted for cleaning decanters; Brushes adapted to receive a cleaning agent; Brushes and brush-making articles; Brushes connectable to water hoses; Brushes (Dishwashing -); Brushes (Electric -), except parts of machines; Brushes (except paint brushes); Brushes (except paintbrushes); Brushes, except paintbrushes; Brushes for basting meat; Brushes for billiard tables; Brushes for cleaning; Brushes for cleaning babies' feeding bottles; Brushes for cleaning bicycle components; Brushes for cleaning cars; Brushes for cleaning footwear; Brushes for cleaning golf clubs; Brushes for cleaning medical instruments; Brushes for cleaning musical instruments; Brushes for cleaning tanks and containers; Brushes for connection to garden hose; Brushes for feeding bottle teats; Brushes for feeding bottles; Brushes for footwear; Brushes for grooming golf putting greens; Brushes for grooming horses; Brushes for grooming pet animals; Brushes for household purposes; Brushes for household use; Brushes for parquet floors; Brushes for personal hygiene; Brushes for pets; Brushes for pipes; Brushes for use on tree bark; Brushes for washing up; Brushes with detergent containers; Brush-making (Material for -); Brush-making materials; Buckets; Buckets for household use; Buckets for industrial use; Buckets incorporating castors; Buckets incorporating mop wringers; Buckets made of woven fabrics; Buckskin for cleaning; Bud vases; Bulb basters; Burners (Perfume -); Busts made of china; Busts made of earthenware; Busts made of glass; Busts made of terra cotta; Busts of china; Busts of china, terra-cotta or

glass; Busts of crystal; Busts of earthenware; Busts of glass; Busts of porcelain; Busts of porcelain, ceramic, earthenware or glass; Busts of porcelain, ceramic, earthenware, terra-cotta or glass; Busts of terra cotta; Butlers' trays; Butter coolers; Butter curlers; Butter dishes; Butter pans; Butter-dish covers; Buttonhooks; Cabarets [trays]; Caddies for holding hair accessories for household and domestic use; Cafetieres; Cages for carrying pets; Cages for household pets; Cages for pets; Cages of metal for domestic use; Cake bases; Cake brushes; Cake decorating tips and tubes; Cake domes; Cake molds; Cake molds [moulds]; Cake molds of common metal; Cake molds of non-metallic materials; Cake moulds; Cake moulds of common metal; Cake moulds of non-metallic materials; Cake pans; Cake plates; Cake rests; Cake rings; Cake servers; Cake stands; Cake stands of non-metallic materials; Cake tins; Cake trays; Camping grills; Candelabra [candlesticks]; Candelabras; Candle drip rings; Candle extinguishers; Candle extinguishers, not of precious metal; Candle extinguishers of precious metal; Candle holders; Candle holders not of precious metal; Candle holders of precious metal; Candle holders of wrought iron; Candle jars [holders]; Candle rings; Candle rings, not of precious metal; Candle rings of precious metal; Candle snuffers; Candle snuffers, not of precious metal; Candle sticks; Candle warmers, electric and non-electric; Candlesticks; Candlesticks of glass; Candlesticks of precious metal; Candlesticks with wind protection; Candy boxes; Candy boxes, not of precious metal; Candy boxes of precious metal; Candy dishes; Canister sets; Canning rubber for household purposes; Car washing mitts; Carafes; Carboys; Cardboard cups; Carpet beaters [hand instruments]; Carpet beaters (Non-electric -); Carpet beaters, not being machines; Carpet beaters [not being machines]; Carpet rakes; Carpet shampoo applicators (Non-electric -); Carpet sweepers; Carpet sweepers [non-electric]; Carpet sweepers (Non-electric -); Carpet-cleaning brushes; Carver

	<i>rests; Carving boards; Carving boards for kitchen use; Carving forks; Cases adapted for cosmetic utensils; Cases adapted for toilet utensils; Cases (Comb -); Cases for toiletry articles; Casseroles [dishes]; Cast stone containers for household; Cat litter boxes; Cat litter pans; Cattle hair for brushes; Cattle troughs; Cauldrons; Caviar coolers; Ceramic coin boxes; Ceramic figurines; Ceramic hollowware; Ceramic mugs; Ceramic ornaments; Ceramic tableware; Hand tools for the application of cosmetics; Holders for cosmetics; Cosmetics applicators; Cosmetics brushes; Racks for cosmetics; Perfume atomisers; Perfume atomizers [empty]; Perfume bottles; Perfume bottles sold empty; Perfume burners; Perfume burners [other than electric]; Perfume sprayers; Perfume sprayers [sold empty]; Perfume sprays, sold empty; Perfume vaporizers; Burners (Perfume -); Vaporizers for perfume [empty]; Vaporizers for perfume sold empty.</i>
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2. On 5 May 2021, the application was opposed by Fridababy, LLC ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The Opponent relies on the following three earlier registrations:

i) Earlier registration WO0000001570689

FRIDA MOM

Date of protection of the international registration in the UK: 10 September 2021

Designation date: 26 August 2020

Priority date: 26 August 2020

Priority country: United States of America

The earlier mark is registered in classes 3, 5, 10, 11, 20 and 24. The Opponent relies on its goods in classes 3 and 5 only, as follows:

Class 3:	<i>Skin masks; breast pads impregnated with essential oils.</i>
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Class 5:	<i>Sanitary pads; sanitary napkins; sanitary preparation for medical purposes; sanitary preparation for personal hygiene for medical purposes other than toiletries; panty liners; medicated pre-moistened wipes; medicated ointments for treating dermatological conditions; disposable adult diapers; medicated balms for treatment of skin; breast pads; breast-nursing pads; hemorrhoid treatment preparations; hemorrhoidal ointments; gummy vitamins; nutritional supplements for promoting lactation; nutritional supplements for promoting healthy hair; dietary fiber to aid digestion; dietary and nutritional supplements; nutritional supplements in the nature of nutritionally fortified soft chews; saline solution for medical purposes; adhesive tapes for medical purposes.</i>
Class 11:	<i>Cold packs for cooling the body not for medical purposes; chemically-activated cold packs for cooling the body and not for medical purposes; sitz bath.</i>

To the extent that this earlier registration is relied on, the Opposition is directed against all of the goods for which the Applicant seeks registration.

ii) Earlier registration UK00003519345

FRIDABABY

Filing date: 5 August 2020

Date of entry in register: 5 February 2021

Registered for the following goods and services:

Class 10:	<i>Manual sputum aspirators; Electric sputum aspirators; Paediatric pacifiers; Medical syringes; Oral syringes; Cooling pads for first aid purposes; Nasal aspirators; Nasal irrigators, non-electric; Nasal</i>
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	<i>irrigators, electric; Teething soothers; Thermometers for medical purposes; Infrared thermometers for medical purposes; Ear picks; Rectal instruments; bottles for medical use; cushions for medical purposes; pillows for medical purposes; peri bottles; pads for medical and therapeutic purposes.</i>
Class 35:	<i>Online retail services connected with the sale of baby care products and healthcare, sanitary, bath, and therapeutic products for women before, during, and after childbirth.</i>

The Opponent relies on all of its goods and services. The Opposition is directed against all of the goods for which the Applicant seeks registration.

iii) Earlier registration UK00003631214

Frida Baby

Filing date: 23 April 2021

Date of entry in register: 5 November 2021

Priority date: 20 December 2019

Priority country: European Union Intellectual Property Office (EUIPO)

Registered for the following goods:

Class 3:	<i>Baby wipes; Bath gel; Bath oil; Essential oils; Essential oils for household use; Bath bombs.</i>
Class 5:	<i>Saline solution for sinus and nasal irrigation; Wipes for medical use; Nose drops.</i>
Class 21:	<i>Toothbrushes; Training toothbrushes for babies; Finger toothbrushes for babies; Hairbrushes; Combs; Floss for dental purposes; Manual dental flossers; Baby bath tubs.</i>

The Opponent relies on all of its goods. The Opposition is directed against all of the goods for which the Applicant seeks registration.

3. The Opponent claims that:
 - the Applicant's mark is similar to the Opponent's three earlier marks;
 - that the parties' respective goods are identical or similar;

 - that there is therefore a likelihood of confusion between the Applicant's mark and each of the Opponent's earlier marks.
4. The Applicant filed a Defence and Counterstatement in which it:
 - denies that the parties' marks are similar;
 - denies that there is a likelihood of confusion.
5. The Opponent is represented by Page, White & Farrer Limited; the Applicant represents itself.
6. Only the Opponent filed evidence. A hearing was neither requested nor considered necessary. Only the Opponent filed written submissions in lieu of a hearing.
7. The following decision has been made after careful consideration of the papers before me.

Opponent's evidence

8. The Opponent's evidence comes from James Philip Cornish, Trade Mark Attorney and Solicitor of the Opponent. Mr Cornish's Witness Statement is dated 13 June 2022. There are ten exhibits, JPC1 – JPC10. The Witness Statement seeks to demonstrate that 'the element FRIDA is distinctive, unlike LONDON, MOM, BABY and that consumers are accustomed to goods for a wide range of personal care, beauty care, baby care, and mother care goods, having the same origin.'¹ I will not summarise the statement or exhibits in detail here, but confirm that I have read

¹ Witness Statement of James Philip Cornish, paragraph [14].

them in their entirety and will refer to them, where appropriate, in the course of my decision.

Decision

Section 5(2)(b) of the Act and related case law

9. Section 5(2)(b) of the Act states:

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

(a) ...

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

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

10. In accordance with section 6 of the Act, the Opponent’s three marks are earlier marks:

i) International registration WO0000001570689 is an earlier mark by virtue of its priority date (26 August 2020);

ii) UK00003519345 and iii) UK00003631214 are earlier marks by virtue of their filing dates (5 August 2020 and 20 December 2019, respectively);

all of which fall before the filing date of the applied-for mark on 2 December 2020.

11. Section 6A of the Act provides that where the date on which the registration procedure of the earlier mark was completed more than 5 years prior to the application date (or priority date) of the applied-for mark, the Opponent may be

required to prove use of the earlier mark. In the instant case, section 6A is not engaged because each of the Opponent's marks had been protected in the UK/registered for less than 5 years on the date on which the Applicant filed its application. The Opponent is therefore entitled to rely upon all of the goods and services that it seeks to rely upon.

12. The following principles are derived from the decisions of the Court of Justice of the European Union² ("CJEU") 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 C120/04; *Shake di L. Laudato & C. Sas v OHIM*, Case C-334/05P; and *Bimbo SA v OHIM*, Case C-591/12P

The principles:

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

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

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

² 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.

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

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

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

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

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

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

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

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Preliminary issue

13. State of the Register evidence

I note that both parties have made reference to the presence of ‘other brands with “Frida” in the name.’³

14. The brands referred to include: ‘John Frieda London’, which does not contain the element ‘Frida’; ‘Frida Home’, which appears to sell bed linen, and ‘Frida Room’, which appears to offer beauty treatments. While this is noted, my assessment is concerned only with the particular marks pertinent to this Opposition.

15. In the case of *46 Maras*⁴, Mr Thomas Mitcheson Q. C., sitting as the Appointed Person, held that:

‘...It is well established that mere evidence of the state of the register is of little assistance in determination of disputes of this nature. Without evidence of use and reputation, the existence of other registrations can have no bearing on the question of the likelihood of confusion.’

Comparison of goods and services

16. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International

³ Applicant’s counterstatement; Witness Statement of James Philip Cornish, at paragraph [4]; Opponent’s exhibit JPC2; Opponent’s written submissions in lieu of a hearing, paragraph [8].

⁴ O/112/21 at para [20].

Classification of Goods and Services for the Purposes of the Registration
of Marks of 15 June 1957, which was last amended on 28 September 1975.”

17. In making an assessment between the competing services, I bear in mind the decision of the General Court ('GC') in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05:

“29. ... 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 für 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”.

18. The CJEU in *Canon*, Case C-39/97, stipulates that all relevant factors relating to a parties' goods and services must be taken into account:

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

19. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281⁵, identified the following factors for assessing similarity of the respective goods and services:

- (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;

⁵ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

(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.

20. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.⁶

21. 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 [or services]. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

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

22. Goods (or services) may be grouped together for the purposes of assessment:

Separode Trade Mark BL O-399-10 (AP):

“The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be

⁶ *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.

assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision.”

23. 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.”

24. The marks and their respective specifications have been set out at [1] and [2] above and need not be repeated here.

25. The Opponent’s submissions on the matter of the comparison of the parties’ goods and services are couched in very general terms and, in the main, contain ‘broad brush’ statements, e.g. ‘The goods of the two parties are sold through the same trade channels, particularly pharmacy outlets, shops dealing with personal care, and shops dealing with goods for the home, including the bathroom’.⁷ Although particular submissions have been made in respect of ‘essential oils’, ‘brushes’ and ‘containers, applicators, vaporisers etc in class 21’, for example, a great deal of the Applicant’s specification remains unaddressed. For the most part, the Opponent

⁷ Opponent’s written submissions in lieu of a hearing, paragraph [19].

has not stated which particular goods within the Applicant's specification are identical/similar with which of the Opponent's goods or services. I will therefore make my own comparisons.

Class 3

Applicant's goods: *skin masks [cosmetics]*

26. The Applicant's term *skin masks [cosmetics]* also appears in the Opponent's specification⁸ (WO0000001570689). These goods are self-evidently identical.

Applicant's goods: *Functional cosmetics;*⁹ *Humectant preparations [cosmetics]*¹⁰; *Multifunctional cosmetics; Natural cosmetics; Non-medicated cosmetics; Non-medicated cosmetics and toiletry preparations; Organic cosmetics; Cosmetics; Cosmetics and cosmetic preparations; Cosmetics containing hyaluronic acid;*¹¹ *Cosmetics containing keratin;*¹² *Cosmetics containing panthenol;*¹³ *Cosmetics for personal use; Cosmetics for the treatment of dry skin; Cosmetics for use in the treatment of wrinkled skin; Cosmetics for use on the skin; Cosmetics in the form of creams; Cosmetics in the form of gels; Cosmetics in the form of lotions; Cosmetics preparations; Pores tightening mask packs used as cosmetics; Skin care cosmetics; Skincare cosmetics*

27. Each of the above-mentioned terms will, in my view, encompass the Opponent's term *Skin masks*. These goods are therefore 'Merit' identical.

Applicant's goods: *Essential oils as perfume for laundry purposes; Natural oils for perfumes; Oils for perfumes and scents; Peppermint oil [perfumery]; Perfumed oils for skin care; Perfume oils; Perfume oils for the manufacture of cosmetic*

⁸ The Opponent's term is *skin masks* solus, but this makes no real difference because both parties' terms are, essentially, 'skin masks'.

⁹ Cosmetics which have a property such as moisturising, exfoliating, conditioning etc.

¹⁰ Humectants are substances used in skincare products and are intended to help moisturise the skin.

¹¹ Hyaluronic acid is an ingredient used in some skincare products intended to reduce the appearance of wrinkles.

¹² Keratin is an ingredient used in some skincare products to help moisturise the skin.

¹³ Panthenol is an ingredient used in some skincare products to help moisturise the skin.

preparations; Aromatics for perfumes; Bases for flower perfumes; Extracts of flowers [perfumes]; Extracts of flowers being perfumes; Flower perfumes (Bases for -); Flowers (Extracts of -) [perfumes];

28. I compare the above-mentioned goods to the Opponent's *Essential oils* (UK00003631214). *Essential oils* are natural fragranced oils typically obtained by distillation from plants (e.g. lavender or eucalyptus oils). They have a number of uses including, *inter alia*: as ingredients in perfumes (aside from being used as perfumes themselves); direct application to the body for massage, relaxation or to enhance one's mood; to fragrance rooms. In my view, each of the Applicant's terms will include goods encompassed by the Opponent's term *Essential oils*. These goods are therefore 'Meric' identical.

29. I now compare the Applicant's term *Cosmetics in the form of oils* to the Opponent's term *Essential oils* (UK00003631214). The Applicant's goods will be applied to the skin with the intention of enhancing its condition and/or appearance. Some essential oils (e.g. tea tree oil) might be applied to the skin for the same reason. The goods may therefore overlap in purpose in some instances. Users may overlap somewhat. Trade channels will be shared; some retail outlets may sell both parties' goods. The goods might have similar physical natures in some instances. *Essential oils* are typically sold in small glass bottles and the Applicant's goods might sometimes be sold in this form. Although I have found some overlap in use, I do not consider the goods to be realistic alternatives for one another; I consider it unlikely that a purchaser would deliberate over whether to purchase a 'cosmetic in the form of an oil' over an *essential oil*. I do not find the goods to be complementary, either; neither good is necessary for the other. I find the goods to be similar to no more than a medium degree.

30. The Applicant's *Perfumery, essential oils* is self-evidently identical to the Opponent's *Essential oils* (UK00003631214).

31. The Opponent has submitted that ‘these [essential oils] are similar, complementary, competing and overlapping with the Applicant’s perfumes [...]’.¹⁴ The Opponent has adduced evidence at Exhibit JPC8 intended to demonstrate that essential oils are used in the making of fragrances ‘and that such goods are competing with perfumes’.¹⁵ Exhibit JPC8 comprises a number of articles on the use of essential oils in cosmetics and fragrances, as well as in aromatherapy. Included is a number of screen captures from the website of retailer ‘ChemistDirect’ showing product listings for essential oils alongside products in which essential oils are an ingredient, e.g. ‘Original Source Shower Gel Mint & Tea Tree’. While the Opponent’s submissions are noted, the inclusion of a good as an ingredient in another good does not necessarily lead to similarity between those goods:

In *Les Éditions Albert René v OHIM*, Case T-336/03, the General Court found that:

“61... The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

Applicant’s goods: Perfume; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumes; Perfumes for ceramics;¹⁶ Perfumes in solid form; Liquid perfumes; Natural perfumery; Solid perfumes; Extracts of perfumes¹⁷

32. I compare these goods to the Opponent’s *Essential oils* (UK00003631214). The purposes of the respective goods will coincide to the broad extent that both are scented. However, the specific purposes will, in many cases, differ; the primary purpose of the Applicant’s goods is to impart a pleasant aroma, whereas the Applicant’s essential oils, although scented, have a variety of other purposes e.g.

¹⁴ Opponent’s written submissions in lieu of a hearing, paragraph [16].

¹⁵ As above.

¹⁶ In my view, this term will cover perfumes for ceramic receptacles such as diffusers used to fragrance a room.

¹⁷ Extract of perfume is more often referred to a ‘Extrait de Parfum’ (sometimes referred to as ‘Parfum’) and is the strongest concentration of perfume.

massage, stress relief, to aid sleep etc. Users will overlap somewhat; consumers of the Applicant's goods may also purchase *essential oils*. Methods of use will also overlap to the extent that both parties' goods may be dabbed on to the body. Trade channels will overlap somewhat; both parties' goods might be offered by the same physical shops/websites. With the exception of the Applicant's *solid perfumes/perfumes in solid form*, the physical nature of the parties' goods may sometimes coincide i.e. when the Applicant's perfume is in the form of an oil. However, many perfumes are in the form of a tincture (where the plant extract is suspended in alcohol) or some other suspension that is not in the form of an oil. Although both parties' goods can be applied to the body to impart a pleasant scent, I do not consider the goods to be in competition; a consumer looking to purchase a bottle of perfume would not realistically consider an essential oil as a suitable alternative. I do not find complementarity between the parties' goods, either; although *essential oils* can be important in relation to each of the Applicant's terms e.g. as ingredients, I consider it unlikely that the average consumer would presume both parties' goods to derive from the same undertaking. In the light of the foregoing, I find the parties' respective goods to be similar to no more than a medium degree.

Applicant's goods: *Room perfume sprays; Room perfumes in spray form*

33. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods are used in the home to impart a fragrance to rooms. The parties' goods will overlap in purpose to the extent that the Opponent's *essential oils* may also be used in this way. Users may overlap somewhat. Trade channels may overlap. In terms of physical nature, both parties' goods will be sold in bottles, albeit that the Applicant's goods will have a 'sprayer' affixed whereas essential oils are typically sold in small, usually glass, bottles with a screwcap. I find the goods to be in competition; either may be used to fragrance a room. However, I do not find complementarity; although an average consumer might presume both goods to originate from the same undertaking, neither good is necessary or important for the other. I find the parties' goods to have a level of similarity in the medium-high range.

34. I now compare the Applicant's *Perfumes for cardboard* to the Opponent's *Essential oils*. In my view, the Applicant's goods will cover perfumes intended for fragranced cardboard goods such as, *inter alia*, scented drawer liners, stationery, gift tags. The purposes of the goods are therefore very different. Users will also be distinct; the Applicant's goods will only be purchased by the professional public i.e. manufacturers producing the cardboard products for which the perfumes are required. Trade channels will also be distinct. The goods will coincide in physical nature only to the extent that both are scented liquids. However, the respective products will look different; the Opponent's essential oils will typically be sold in small glass bottles whereas the Applicant's goods, intended for manufacturers, will likely be sold in large receptacles. The parties' goods are neither competitive nor complementary. I find the parties' goods to be dissimilar.

Applicant's goods: *Ionone*¹⁸ [perfumery]; *Mint for perfumery*; *Musk* [perfumery]; *Synthetic perfumery*; *Synthetic vanillin* [perfumery]; *Vanilla perfumery*; *Amber* [perfume];¹⁹ *Cedarwood perfumery*; *fumigation preparations* [perfumes].

35. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The parties' respective goods will overlap in purpose to the extent that both are used as ingredients in the manufacture of perfumes/fragrances. Users may overlap in certain instances, e.g. a perfume manufacturer might purchase either good. However, *essential oils* are just as likely to be purchased by the general public as standalone ready-to-use products rather than purely as ingredients for perfumes. I consider trade channel overlap to be possible, but uncommon; the average consumer of the Applicant's goods will more likely be the professional public, e.g. perfume manufacturers, and I find it unlikely that such goods are routinely offered by a retailer. Wholesalers/suppliers might, however, stock both parties' goods for business consumers. The physical natures of the goods may coincide; both might take the form of oils. I consider the goods to be in a competitive relationship; both parties' goods could be used as components of perfumes/fragrances. I do not find the goods to be complementary; neither good is necessary or important for the

¹⁸ A compound found in essential oils e.g. rose oil.

¹⁹ A scent formed from a blend of other ingredients including vanilla and patchouli, used as a component in perfumes/fragrances.

other, even if the average consumer were to presume both parties' goods to derive from the same undertaking. I find the parties' goods to be similar to no higher than a medium degree.

Applicant's goods: *Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]*

36. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The purposes of the respective goods will overlap somewhat; both may be applied to the person for the purposes of moisturising the skin, or during a massage. Both parties' goods are valued for their scented properties. In many instances, however, the purposes of the goods will differ e.g. where *essential oils* are used to aid relaxation/sleep or to fragrance a room. Users may overlap in some cases. Trade channels may overlap in some instances, but I consider the area of crossover to be limited; although *some* retailers may offer both parties' goods, many cosmetics companies will not retail *essential oils*. The goods will differ in terms of physical nature; although both may be sold in bottles, the Opponent's goods will be in the form of an oil as opposed to a cream or lotion. I consider the goods to be competitive in *some* instances; one might deliberate over whether to purchase an essential oil or a cream/lotion to moisturise one's skin or use during a massage. I do not find the goods to be complementary; *essential oils* might be used as ingredients in perfumed creams/lotions, I consider it uncommon for the average consumer to presume that both originate from the same undertaking. I find the parties' goods to be similar to a low-medium degree.

Applicant's goods: *Perfume water; Perfumed toilet waters; Perfumed water*

37. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The parties' goods overlap in purpose to the extent that both are scented and can be dabbed on to the person to impart a pleasant fragrance. However, as noted above at [36], in many instances, the purposes of the goods will diverge, e.g. where *essential oils* are used to aid relaxation/sleep or to fragrance a room. Users may overlap in some cases. Trade channel overlap is unlikely, in my view (although not impossible). The goods will differ in terms of physical nature, the Opponent's goods

being in the form of an oil as opposed to an aqueous liquid. Although both parties' goods can be applied to the body to impart a pleasant scent, I do not consider the goods to be in competition; one would not realistically deliberate over whether to purchase an eau de toilette over an essential oil. I do not find complementarity, either; although essential oils might sometimes be used as ingredients in the Applicant's goods, I consider it unlikely that the average consumer would presume both parties' goods to originate from the same undertaking. I find the parties' goods to be similar to a low - medium degree.

Applicant's goods: *Moisturisers [cosmetics]; Mousses [cosmetics]; Skin moisturizers used as cosmetics; Skin recovery creams [cosmetics]; remover [cosmetics]; Natural cosmetics; Night creams [cosmetics]*

38. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods are cosmetic preparations applied topically with the aim of enhancing the condition and/or appearance of the skin. The purposes of the parties' respective goods will overlap to the extent that certain *essential oils* (e.g. tea tree oil) are sometimes applied to the skin with the aim of improving its condition/appearance, although, as already noted, *essential oils* have a number of other purposes e.g. to improve mood, aid relaxation, impart fragrance etc. Users and trade channels may overlap somewhat. The physical natures of the goods will differ; the Applicant's goods taking the form of a mousse, lotion or cream as compared to the Opponent's oils. In my view, the respective goods will, in some instances, be competitive; one might deliberate over whether to apply an essential oil or one of the Applicant's goods to improve one's skin tone, for example. I do not find the goods to be complementary; although *essential oils* might be used as ingredients in perfumed creams/lotions, I consider it unlikely for the average consumer to presume that both originate from the same undertaking. I find the parties' goods to be similar to a low degree.

Applicant's goods: *Milks [cosmetics]; Cosmetics in the form of milks*

39. I compare these goods to the Opponent's *Bath gel* (UK00003631214). The Applicant's broad terms will, in my view, include 'bath milks' i.e. preparations in a

'milk' form (a thin milk-like fluid) that are added to bath water with the aim of enhancing the condition/appearance of the skin. The Opponent's *Bath gel* will, in my view, have the same purpose and method of use. Users and trade channels will overlap. The physical natures of the goods will differ to the extent that the Opponent's goods are in the form of a gel as opposed to the Applicant's goods in the form of milks. The respective goods are in a competitive relationship; the Opponent's *Bath gel* is substitutable for a 'bath milk' under the Applicant's terms. There is no complementarity between the parties' goods because neither is necessary or important for each other. I find the parties' goods to be highly similar.

Applicant's goods: *Nail base coat [cosmetics]; Nail cosmetics; Nail paint [cosmetics]; Nail polish removers [cosmetics]; Nail primer [cosmetics]; Nail tips [cosmetics]; Nail varnish remover [cosmetics]*

40. These goods are all related to enhancing the appearance and/or condition of the nails. In my view, none of the Opponent's goods or services have the same or similar purpose. Having also considered the users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

41. I now compare the Applicant's *Cosmetics for children* to the Opponent's *Skin masks* (WO0000001570689). In my view, the Applicant's term will include 'skin masks' aimed at children. I therefore find the parties' goods to be 'Merit' identical.

Applicant's goods: *Glitter in spray form for use as a cosmetics; Liners [cosmetics] for the eyes; Lip stains [cosmetics]; Cosmetics in the form of eye shadow; Cosmetics in the form of powders; Cosmetics in the form of rouge; Powder compact refills [cosmetics]; Powder compacts [cosmetics]; Smoothing emulsions [cosmetics]; Solid powder for compacts [cosmetics]; Sun blocking lipsticks [cosmetics]; Temporary tattoo transfers for use as cosmetics*

42. I compare these goods to the Opponent's *Skin masks* (WO0000001570689). The parties' goods share a purpose only to the broad extent that both aim to improve the appearance in some way. The goods will differ in terms of specific purpose; the Applicant's goods are make-up products used to add either colour, decoration or coverage to the skin/facial features, whereas the Opponent's masks are intended to improve the condition or appearance of the skin itself. Methods of use will also differ. *Skin masks* will be applied to the skin and tend to be left for a short period of time being washed off, whereas the Applicant's goods will be applied with the intention of leaving the products on the skin/facial features for a prolonged period of time (often for a matter of hours). Users will overlap; consumers of *skin masks* may also purchase the Applicant's goods. Trade channels will be shared; both goods will be available from the same retail outlets. The physical natures of the respective goods will differ to the extent that the Applicant's goods are pigmented and will add colour, whereas this is not the case with the Opponent's masks. In my view, the goods are neither competitive nor complementary. In the light of the foregoing, I find the goods to have a low level of similarity.

43. I now compare the Applicant's *Lip cosmetics* to the Opponent's *Skin masks* (WO0000001570689). *Lip cosmetics* will, to my mind, include 'lip masks' i.e. a preparation applied to the lips for a set period of time with the aim of improving the condition and/or appearance of the lips. The parties' goods will therefore overlap in some instances in terms of purpose, albeit that the Applicant's goods are applied specifically to the lips. Trade channels may overlap in some instances. Methods of use will be similar, the only difference being the area to which the product is applied. Users might overlap occasionally. The goods will, in most cases, differ in terms of physical nature; the Applicant's goods typically sold in small containers or as 'lipsticks'. I do not find the goods to be in competition; a lip mask would not, in my view, be used elsewhere on the person and I consider it unlikely that an average consumer would apply a *Skin mask* to the lips. I do not find complementarity either. Although an average consumer might presume both parties' goods to originate from the same undertaking, neither goods are necessary or important for the other. I find the parties' goods to have a low level of similarity.

Applicant's goods: *Cosmetics for protecting the skin from sunburn; Sun barriers [cosmetics]; Sun block [cosmetics]; Sun blocking oils [cosmetics]; Sun blocking preparations [cosmetics]; Sun protecting creams [cosmetics];*

44. I compare these goods to the Opponent's *Skin masks* (WO0000001570689). The parties' goods share a purpose to the broad extent that both are skincare products. However, their specific purposes are different; the Applicant's goods are intended to protect the skin from exposure to the sun whereas the Opponent's masks are intended to improve the condition/appearance of the skin. Methods of use will also differ somewhat; although both parties' goods are applied to the skin, the Opponent's masks will be worn for a set time period to achieve the desired result, whereas the Applicant's goods will be worn whenever the user is exposed to the sun. Users and trade channels will overlap. The goods will sometimes be similar in terms of physical nature e.g. both parties' goods may take the form of a cream or lotion. I do not find the goods to be in competition; neither good is substitutable for the other. I do not find complementarity either. I find the goods to have a low level of similarity.

Applicant's goods: *Cosmetics for suntanning; self-tanning preparations [cosmetics]; Sun-tanning preparations [cosmetics]; Suntan lotion [cosmetics]; Suntan oils [cosmetics]; Suntanning oil [cosmetics]; Tanning gels [cosmetics]; Tanning milks [cosmetics]; Tanning oils [cosmetics]; Tanning preparations [cosmetics]*

45. I compare these goods to the Opponent's *Skin masks* (WO0000001570689). The Applicant's goods are intended to enable the user to achieve a tanned appearance; whether 'fake' (i.e. by applying a pigment), or by accelerating the tanning effects of the sun on the skin. The specific purposes of the parties' goods are therefore very different. Methods of use will differ somewhat; although both will be applied to the skin, the Opponent's goods will be worn for a set time until the desired result is achieved (e.g. moisturisation or cleansing of the skin) after which they will be washed/peeled off, whereas the Applicant's products will be used until the desired level of tanning is achieved. Users may overlap; a user of *skin masks* might also purchase the Applicant's tanning products. Trade channels will overlap; both

parties' goods will be sold in the same retail outlets. The goods will sometimes be similar in terms of physical nature e.g. both parties' goods may take the form of a cream or lotion. I do not find the goods to be in competition; neither good is substitutable for the other. I do not find complementarity either. I find the goods to have a low level of similarity.

46. I now compare the Applicant's *Cosmetics all for sale in kit form* to the Opponent's *Skin masks* (WO0000001570689). The Applicant's term will, to my mind, cover sets comprising a number of cosmetic items in one 'bundle' that are aimed at a particular area of the person. An example might be a 'nail kit' comprising various products e.g. nail conditioner, base coat varnish and nail varnish remover. Another example might be a 'facial kit' comprising a face mask, serum and moisturiser, for instance.²⁰ Such 'facial kits' which include a face mask will therefore overlap in purpose somewhat with the Opponent's *Skin masks*. Users and trade channels will overlap. In the case of a cosmetic kit which includes a *skin mask*, I consider the respective goods to be in competition; one might deliberate over whether to purchase a *skin mask* on its own or a kit in which a *skin mask* is included. I do not find the parties' goods to be complementary; although the average consumer may presume both goods to originate from the same undertaking, a *skin mask* is not necessary or important for a cosmetic kit which already includes a skin mask (and vice versa). I find the parties' goods to have a medium level of similarity.

Applicant's goods: *Hair cosmetics; Cosmetics for the use on the hair*

47. I compare these goods to the Opponent's *Skin masks* (WO0000001570689). The respective goods will differ in purpose; the Applicant's goods relating to the hair, whereas the Opponent's goods relate to the skin. In my view, the Applicant's goods will cover, *inter alia*, shampoos, conditioners, hair styling products and 'hair masks' (i.e. preparations that are applied to the hair for a set time period with the aim of improving the condition/appearance of the hair). Users will overlap somewhat; consumers of the Applicant's hair products may also purchase *skin masks*. Trade

²⁰ These are just examples. There are many combinations of cosmetic products that might be put together as a 'kit'.

channels will overlap; both parties' goods will be sold in the same retail outlets. To the extent that 'hair masks' will fall under the Applicant's terms, methods of use will overlap; both will be applied to the target area and left for a set time period. 'Hair masks' and *skin masks* might coincide in physical nature where both are in the form of creams or gels, for example. I do not find the respective goods to be competitive or complementary. I find the goods to be similar to a low-medium degree.

Applicant's goods: *Cosmetics for eye-brows; Cosmetics for eye-lashes*

48.I compare the Applicant's goods to the Opponent's *Skin masks* (WO0000001570689). The respective goods will differ in purpose; the Applicant's goods relating to the eyebrows/lashes, as opposed to the Opponent's goods which focus on the skin. Users will overlap somewhat; consumers of the Applicant's products may also purchase *skin masks*. Trade channels will overlap; both parties' goods will be sold in the same retail outlets. Methods of use will differ; the Applicant's goods, to the extent that they comprise make-up (e.g. mascaras or brow pencils) will be used to add colour or definition to the wearer's features and will be worn for a prolonged period, as opposed to the Opponent's masks which will be washed off after a set time. I do not find the respective goods to be competitive or complementary. I find the parties' goods to have a low level of similarity.

49.I now compare the Applicant's *Cosmetics for animals* to the Opponent's *Skin masks* (WO0000001570689). The purposes of the parties' respective goods are very different; the Applicant's goods intended for animals, whereas the Opponent's goods are intended for humans. Users will be distinct; users of the Applicant's goods will be pet owners or professionals in the pet grooming business, whereas users of the Opponent's goods will be individuals seeking to improve the appearance of their skin or professionals in the beauty trade. Trade channels will be distinct; I consider it unlikely that both parties' goods would be sold in the same outlets. The goods are neither competitive nor complementary. I find the parties' goods to be dissimilar.

Applicant's goods: *Perfumed powder; Perfumed powder [for cosmetic use]; Perfumed powders; Perfumed powders [for cosmetic use]*

50. I compare these goods to the Opponent's *Skin masks* (WO0000001570689). In my view, both parties' terms will include preparations that are applied to the face. The respective goods therefore share a purpose to the broad extent that both can be used to improve the appearance of the face. The goods will differ in their specific purposes to the extent that the Applicant's powders (in so far as they are used for the face), being items of make-up, add colour to/enhance the tone of the skin by virtue of their presence on the face. In my view, the perfumed quality of the Applicant's goods is not the primary feature sought by the purchaser; rather, the goods are purchased for the purposes outlined above. Methods of use will differ in that the Opponent's masks will be worn for a set time before being washed off whereas the Applicant's goods will typically be worn for several hours. Users will overlap somewhat; consumers of the Applicant's goods may also purchase *skin masks*. Trade channels will overlap; both parties' goods will be sold in the same retail outlets. I do not find the goods to be in competition. I do not find complementarity, either. Although the average consumer may presume both parties' goods to originate from the same undertaking, neither is necessary or important for the other. I find the parties' goods to have a low level of similarity.

51. I now compare the Applicant's *Impregnated cleaning pads impregnated with cosmetics* to the Opponent's *breast pads impregnated with essential oils* (WO0000001570689). The Applicant's goods, to my mind, will include items such as make-up removing pads, or facial cleansing pads, impregnated with some sort of lotion or other cosmetic preparation. The parties' goods will have very different purposes and methods of use; the Opponent's goods used by nursing mothers to absorb milk leakages from the breast as compared to the Applicant's goods intended to clean an aspect of the person. Users may overlap somewhat; nursing mothers may also use the Applicant's cleaning pads. Trade channels will overlap; both parties' goods may be sold by the same retail outlets. The goods will coincide in physical nature in that both are in the form of pads impregnated with a preparation of some sort. I do not find the goods to be competitive; neither is substitutable for the other. I do not find complementarity, either; neither good is

necessary or important for each other and I consider it unlikely that an average consumer would attribute both goods to the same undertaking. In the light of the foregoing, I find the parties' goods to have a very low level of similarity.

Applicant's goods: *Paper hand towels impregnated with cosmetics; Tissues impregnated with cosmetics; Perfumed tissues*

52. I compare the Applicant's goods to the Opponent's class 5 term *medicated pre-moistened wipes* (WO0000001570689). In my view, the parties' goods will have a shared purpose to the extent that both can be used to clean/wipe an aspect of the person, albeit that the Opponent's goods will include wipes impregnated with some sort of antibacterial preparation akin to hand sanitiser as opposed to a cosmetic preparation such as a moisturiser. Users and trade channels will overlap. The parties' goods will be made of different materials; paper (Applicant's goods) as opposed to cotton (Opponent's goods), albeit both will be in the form of a moistened 'sheet'. I consider the goods to be in competition in certain instances; a purchaser seeking a product to wipe the hands might deliberate over whether to purchase the Applicant's tissues/paper towels or the Opponent's wipes. The parties' goods are not complementary; neither is necessary or important for the other, even if the average consumer presumed the same undertaking to be responsible for both. I find the goods to have a medium level of similarity.

53. I now compare the Applicant's *Refill packs for cosmetics dispensers* to the Opponent's *Skin masks* (WO0000001570689). In my view, the Applicant's goods comprise cosmetic products, often packaged in 'pouches', intended to be decanted into more robust receptacles (i.e. cosmetics dispensers such as 'pump action' bottles). To my mind, the Applicant's 'refill packs' might contain products encompassed by the Opponent's *skin masks*. I therefore find the parties' goods to be 'Merit' identical.

54. I now compare the Applicant's *Skin fresheners [cosmetics]* to the Opponent's *Skin masks* (WO0000001570689). The Applicant's goods, to my mind, will include *products such as facial toners and 'mists' intended to refresh the complexion. I consider that some goods encompassed by the Opponent's skin masks will also*

have this intended purpose. Users and trade channels will overlap. Methods of use will overlap to the extent that both terms will cover products applied to the face. The goods may be of a similar physical nature in some instances, both terms covering liquids; although, in my view, 'skin fresheners' will most likely be of a 'watery' consistency as opposed to skin masks which more often take the form of gels, creams or pastes. Although both parties' goods might be sought for the purpose of refreshing the complexion, I do not consider the goods to be realistic substitutes for one another because, in my view, *Skin fresheners* tend to be used daily whereas *skin masks* are used less often e.g. once a week. I do not find complementarity, either. Neither good is necessary or important for the other, even though the average consumer might presume both to originate from the same undertaking. I find the goods to have a medium level of similarity.

55. I now compare the Applicant's *Teeth whitening strips impregnated with teeth whitening preparations [cosmetics]* to the Opponent's class 21 term *Toothbrushes* (UK00003631214). Although both parties' goods have a dental focus, their specific purposes differ; the Applicant's goods are intended to whiten the teeth, thus enhancing their appearance, as opposed to the Opponent's *toothbrushes* whose function is to clean the teeth. Users will overlap. Trade channels will be shared; both parties' goods, in my view, will often be found in the same section in physical shops. Methods of use will differ; the Applicant's 'whitening strips' will be placed across the teeth before being removed after a set period whereas the Opponent's toothbrushes are used to clean the teeth with toothpaste. The goods will differ in terms of physical nature; the Applicant's goods being in the form of strips as compared to the Opponent's brushes. I do not find the goods to be competitive; neither is substitutable for the other. I do not find complementarity, either. Although the average consumer might presume both parties' goods to originate from the same undertaking, neither good is necessary or important for the other. I find the goods to have a very low level of similarity.

Applicant's goods: *Perfumed soap; Perfumed soaps*

56. I compare the Applicant's goods to the Opponent's *Bath gel* (UK00003631214). The goods will overlap in purpose to the extent that both are used to wash the

body, particularly when using a bath. Users and trade channels will overlap. Methods of use will differ in that soap is rubbed with water to generate a lather whereas bath gels are poured into hot running bath water. Where soap is in the form of a bar, the physical natures of the goods will differ, bath gels being liquids contained in bottles. Liquid soaps, on the other hand, will be similar in physical nature to bath gels. I consider the goods to be competitive; one might deliberate over whether to purchase a scented soap over a bath gel for use while bathing. I do not find the goods to be complementary, however. Although the average consumer might presume both parties' goods to originate from the same undertaking, neither good is necessary or important for the other. I find the goods to have a medium level of similarity.

Applicant's goods: *Cushions filled with perfumed substances; Cushions impregnated with perfumed substances*

57. I compare the Applicant's goods to the Opponent's class 10 term *cushions for medical purposes* (UK00003519345). The Applicant's goods, in my view, will include scented cushions placed in linen drawers, on beds or hung in wardrobes in order to impart a fragrance. The Opponent's goods, to my mind, will include 'bathing cushions'²¹ and cushions to elevate parts of the body in order to relieve pain or aid healing. The purposes of the parties' respective goods are therefore very different. Users will be distinct. Consumers of the Applicant's goods will be the general public seeking to fragrance their home or clothing/linen. Consumers of the Opponent's goods will, to my mind, be individuals with medical needs (and their carers), or professionals in the field of healthcare. Trade channel overlap is unlikely; the Opponent's goods most likely available only from retailers specialising in medical goods. I find the goods to be neither competitive nor complementary. I find the parties' goods to be dissimilar.

58. I also compare the above-mentioned contested goods to the Opponent's *Essential oils* (UK00003631214). The goods will overlap in purpose only to the broad extent that both are intended to impart a pleasant aroma. Users and trade channels will

²¹ Inflatable cushions to enable a person with mobility problems to use a bathtub.

overlap. Methods of use and the physical natures of the respective goods will differ. The goods are not in competition; neither being substitutable for the other. I find the goods to be complementary; *essential oils* might sometimes be added to the Applicant's goods and the average consumer might presume both to originate from the same undertaking. I find the parties' goods to have a low - medium level of similarity.

Applicant's goods: *Perfumed potpourris; Perfumed sachets.*

59. I compare the Applicant's goods to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods are intended to fragrance the home and/or linen. For the same reasons set out above at [58], I find the parties' goods to have a low - medium level of similarity.

Applicant's goods: *Deodorants for personal use [perfumery]; Body deodorants [perfumery]*

60. I compare the Applicant's goods to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods are intended to remove or mask bodily odours. Although both parties' goods impart a pleasant fragrance, they differ in their specific purposes. Users may overlap somewhat. Trade channels may be shared. The goods will differ in physical nature; the Applicant's goods typically being sprays or 'roll-on' liquids as compared to the Opponent's oils. I do not consider the goods to be in a competitive relationship. Although essential oils *could* be used about the person to mask bodily odour, I do not consider the goods to be realistic substitutes when considering the average consumer. I find the goods to be complementary; *essential oils* might sometimes be used as ingredients in the Applicant's goods and the average consumer might presume both parties' goods to originate from the same undertaking. I find the parties' goods to be similar to a medium degree.

61. I now compare the Applicant's *Perfumes for industrial purposes* to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods, in my view, will cover

perfumes purchased in large volumes for use in manufacturing e.g. as ingredients in other goods such as toiletries. To my mind, the Opponent's *Essential oils* might also be used as ingredients in the manufacture of other goods. The parties' goods will therefore overlap in purpose somewhat. There will be some user overlap; both goods might be purchased by manufacturers. Trade channels may overlap somewhat; both parties' goods might be purchased from a wholesaler (the Applicant's goods would not be sold by retailers, whereas the Opponent's *Essential oils* would). Methods of use will overlap to the extent that both might be used as ingredients in the manufacture of other goods. The physical natures of the respective goods will coincide where the Applicant's goods take the form of an oil, although, in many cases, the Applicant's perfumes will be in the form of alcohol suspensions. Despite the overlap in purpose and methods of use, I do not consider the parties' goods to be realistic substitutes for one another. In my view, a manufacturer purchasing *essential oils* as an ingredient for other goods would be seeking the properties specific to essential oils as opposed to the mere fragrant properties of the Applicant's perfumes. I do not find the goods to be complementary; neither is necessary or important for the other, even if the average consumer were to presume both to originate from the same undertaking. I find the goods to have at least a medium level of similarity.

Class 21

62. The Applicant's specification contains a large number of terms which, broadly speaking, cover: household/cooking utensils, tools and receptacles; pet/animal-related items; ornaments/artworks; brushes/tools/applicators for personal care.

63. The Applicant's *Baby finger toothbrushes* also appears in the Opponent's specification²² (UK00003631214). These goods are self-evidently identical.

Applicant's goods: *Brush goods; Brushes; Brushes [...]; Brushes (except paint brushes); Brushes (except paintbrushes); Brushes, except paintbrushes;*

²² The Opponent's term has a slightly different wording, *Finger toothbrushes for babies*, but this is of no consequence.

64. Each of the Applicant's broad terms will encompass the Opponent's narrower term *Hairbrushes*. These goods are therefore 'Merici' identical.

Applicant's goods: *3D wall art made of terra-cotta; 3D wall art of made of ceramic; 3D wall art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; Artificial nest eggs; Art objects of glass; Artworks of glass; Busts made of china; Busts made of earthenware; Busts made of glass; Busts made of terra cotta; Busts of china; Busts of china, terra-cotta or glass; Busts of crystal; Busts of earthenware; Busts of glass; Busts of porcelain; Busts of porcelain, ceramic, earthenware or glass; Busts of porcelain, ceramic, earthenware, terra-cotta or glass; Busts of terra cotta; Ceramic ornaments; Ceramic figurines*

65. The Applicant's goods are all objects whose primary purpose is to decorate or adorn a room. In my view, none of the Opponent's goods have this purpose. Having also considered the users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Abrasive mitts for scrubbing the skin; Abrasive pads; Abrasive sponges for scrubbing the skin; Bath brushes; Bath sponges; Body scrubbing puffs; Body sponges; Brushes for personal hygiene*

66. I compare these goods to the Opponent's *Bath gel* in class 3 (UK00003631214). The Applicant's goods are used to rub the skin when washing/bathing. The respective parties' goods share a purpose only to the broad extent that both are used for washing/cleaning the person. The goods differ in their specific purposes; the Opponent's bath gel being the cleaning 'agent' as opposed to the Applicant's goods being 'tools' used with the bath gel. Users and trade channels will coincide. Methods of use will also differ; the Opponent's goods will usually be added to the bath water (although they may in some cases be applied directly to the skin). The goods will differ in physical nature; the Applicant's goods being fashioned from materials such as fabrics and bristles as compared to the Opponent's gels. The

goods are not in competition, neither good being substitutable for the other. I do not find complementarity, either. Although the average consumer might presume both parties' goods to originate from the same undertaking, neither is necessary or important for the other. I find the parties' goods to have a low level of similarity.

Applicant's goods: *Abrasive discs for kitchen [cleaning] purposes; Abrasive gloves for scrubbing vegetables; Abrasive instruments for kitchen [cleaning] purposes; Abrasive pads for kitchen or domestic purposes; Abrasive pads for kitchen purposes; Abrasive sponges for kitchen [cleaning] use; All-purpose portable household containers; Aluminium bakeware; Aluminium cookware; Aluminium moulds [kitchen utensils]; Aluminum water bottles; Aluminum water bottles, empty; Anti-reflecting glass; Anti-static cloths for household use; Apparatus for wax-polishing, non-electric; Articles for cleaning purposes; Articles for the care of clothing and footwear; Artificial sponges for household purposes; Asparagus tongs; Autoclaves (Non-electric -) for household use; Autoclaves, non-electric; Autoclaves, non-electric, for cooking; Autoclaves [pressure cookers], non-electric; Automobile oil funnels; Bakers' tinware; Bakeware; Bakeware [not toys]; Baking containers made of glass; Baking cups of paper; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking dishes made of porcelain; Baking mats; Baking sheets of common metal; Baking tins; Baking trays made of aluminium; Baking utensils; Banana hangers; Barbecue forks; Barbecue mitts; Barbecue tongs; Barbecue turners; Bases for plant pots; Basins; Basins [bowls]; Basins [receptacles]; Baskets for domestic use; Baskets for household purposes; Baskets for waste paper littering; Baskets for waste paper littering for household purposes; Baskets of common metal for domestic use; Baskets of common metal for household use; Basting brushes; Basting spoons; Basting spoons [cooking utensils]; Basting spoons, for kitchen use; Batter dispensers for kitchen use; Battery operated lint removers; Beaters (Carpet -), not being machines; Beaters, non-electric; Beaters (Non-electric -) for kitchen use; Beer glasses; Beer jugs; Beer mats not of paper or textile; Beer mugs; Beer pitchers; Beer steins; Bento boxes; Beverage coolers [containers]; Beverage glassware; Beverage stirrers; Beverage urns, non-electric; Beverages (Heat insulated containers for -); Beverageware; Bins (Dust -); Bins for household refuse; Biobased bottles; Biodegradable bottles; Biodegradable bowls; Biodegradable cups;*

Biodegradable paper pulp-based bowls; Biodegradable paper pulp-based cups; Biodegradable paper pulp-based plates; Biodegradable plates; Biodegradable trays; Biodegradable trays for domestic purposes; Biscuit cutters; Blenders for food [non-electric]; Blenders, non-electric, for household purposes; Boards (Ironing -); Bone china tableware [other than cutlery]; Bota bags; Bottle baskets coated with precious metal; Bottle buckets; Bottle coolers; Bottle coolers [receptacles]; Bottle cradles; Bottle gourds; Bottle openers; Bottle openers, electric and non-electric; Bottle openers [hand-operated]; Bottle openers incorporating knives; Bottle pourers; Bottles (Refrigerating -); Bottle stands; Bouquet holders; Bowls; Bowls [basins]; Bowls for candy; Bowls for floral decorations; Bowls for nuts; Bowls for plants; Bowls for sugar candy; Bowls (Glass -); Bowls made of precious metal; Bowls of precious metal; Boxes for biscuits; Boxes for candies; Boxes for dispensing paper serviettes; Boxes for sweetmeats; Boxes for sweets; Boxes of ceramics; Boxes of china; Boxes of earthenware; Boxes of glass; Boxes of porcelain; Boxes of precious metal for sweets; Brandy snifters; Bread baskets; Bread baskets, domestic; Bread baskets for household purposes; Bread bins; Bread boards; Bread boxes; Bread tongs; Bread-cases [for kitchen use]; Broom handles; Broom handles, not of metal; Buckets; Buckets for household use; Buckets incorporating castors; Buckets incorporating mop wringers; Buckets made of woven fabrics; Bud vases; Bulb basters; Butlers' trays; Butter coolers; Butter curlers; Butter dishes; Butter pans; Butter-dish covers; Buttonhooks; Cabarets [trays]; Cafetieres; Cake bases; Cake decorating tips and tubes; Cake domes; Cake molds; Cake molds [moulds]; Cake molds of common metal; Cake molds of non-metallic materials; Cake moulds; Cake moulds of common metal; Cake moulds of non-metallic materials; Cake pans; Cake plates; Cake rests; Cake rings; Cake servers; Cake stands; Cake stands of non-metallic materials; Cake tins; Cake trays; Camping grills; Candy boxes; Candy boxes, not of precious metal; Candy boxes of precious metal; Candy dishes; Canister sets; Canning rubber for household purposes; Carafes; Cardboard cups; Carpet beaters [hand instruments]; Carpet beaters (Non-electric -); Carpet beaters, not being machines; Carpet beaters [not being machines]; Carpet rakes; Carpet shampoo applicators (Non-electric -); Carpet sweepers; Carpet sweepers [non-electric]; Carpet sweepers (Non-electric -); Carver rests; Carving boards; Carving boards for kitchen use; Carving forks; Car washing mitts; Casseroles [dishes]; Cast stone containers

for household; Cauldrons; Caviar coolers; Ceramic coin boxes; Ceramic hollowware; Ceramic mugs; Ceramic tableware.

67. The Applicant's goods listed above relate to the kitchen/garage or home and/or household tasks. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: Animal activated animal feeders; Animal activated livestock feeders; Animal activated livestock waterers; Animal grooming gloves; Animal traps; Animal-activated pet feeders; Ant habitats; Ant vivaria; Aquaria and vivaria; Aquaria (Indoor -); Aquarium covers; Aquarium hoods; Aquarium ornaments; Aquariums; Attracting and killing insects (Electric devices for -); Automatic litter boxes for pets; Automatic pet feeders; Bait stations, empty, for feeding rodenticides to rodents; Bird baths; Bird baths not being structures; Bird cages; Bird cages for domestic birds; Bird feeders; Bird feeders for feeding birds in the wild; Bird feeders for feeding caged birds; Bird feeders in the nature of containers; Bird feeding tables; Bird repellent devices, not of metal; Birdcages; Cages for carrying pets; Cages for household pets; Cages for pets; Cages of metal for domestic use; Cat litter boxes; Cat litter pans; Cattle troughs.

68. The Applicant's goods listed above are concerned with animals, i.e. the care of pets or stock, or the eradication/deterrence of pests. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: Baby bath tubs; Baby baths; Baby baths, portable; Baby bathtubs; Baths (Baby -), portable;

69. The Opponent's specification (UK00003631214) also contains the term *Baby bath tubs*. The Applicant's terms *Baby baths* and *Baby bathtubs* are also synonymous. These goods are self-evidently identical.

The Applicant's terms *Baby baths, portable* and *Baths (Baby -), portable* will be encompassed by the Opponent's term *Baby bath tubs*. These goods are therefore 'Merici' identical.

70. I compare the Applicant's *Bathtub brushes* to the Opponent's *Baby bath tubs* (UK00003631214). The purposes of the parties' goods are very different; the Applicant's goods are cleaning tools, which can be used to clean baths, as opposed to the Opponent's goods bath tubs for bathing babies. Users may overlap somewhat; purchasers of baby bath tubs may also purchase brushes for cleaning bath tubs. Trade channel overlap is possible but, in my view, uncommon. Methods of use and physical natures of the parties' goods are very different. I find the goods to be neither competitive nor complementary. Although the Applicant's goods may be used for cleaning the Opponent's goods, neither good is necessary or important for the other. In my view, user and trade channel overlap are, without more, insufficient to support a finding of similarity between these goods. I find the parties' goods to be dissimilar.

71. I consider that the Applicant's broad term *Brushes for cleaning* will encompass the Opponent's narrower terms *Toothbrushes; Training toothbrushes for babies; and Finger toothbrushes for babies* by virtue of the fact that the Opponent's goods are used to clean the teeth. These goods are therefore 'Merici' identical.

72. I consider that the Applicant's term *Brushes (Electric -), except parts of machines* will include electric toothbrushes and will therefore be encompassed by the Opponent's *Toothbrushes* (UK00003631214). These goods are therefore 'Merici' identical.

Applicant's goods: *Automobile wheel cleaning brushes; Billiard table brushes; Blacking brushes; Boot brushes; Brooms; Brooms for cleaning purposes; Brushes adapted for cleaning decanters; Brushes adapted to receive a cleaning agent;*

Brushes connectable to water hoses; Brushes (Dishwashing -); Brushes for basting meat; Brushes for billiard tables; Brushes for cleaning bicycle components; Brushes for cleaning cars; Brushes for cleaning footwear; Brushes for cleaning golf clubs; Brushes for cleaning musical instruments; Brushes for cleaning tanks and containers; Brushes for connection to garden hose; Brushes for footwear; Brushes for grooming golf putting greens; Brushes for grooming horses; Brushes for grooming pet animals; Brushes for household purposes; Brushes for household use; Brushes for parquet floors; Brushes for pets; Brushes for pipes; Brushes for use on tree bark; Brushes for washing up; Brushes with detergent containers; Cake brushes; Carpet-cleaning brushes

73.I compare the Applicant's goods to the Opponent's *Toothbrushes* (UK00003631214). Although both parties' goods are types of brush, the specific purposes of the respective goods are very different. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Bobeches*;²³ *Candelabra [candlesticks]; Candelabras; Candle drip rings; Candle extinguishers; Candle extinguishers, not of precious metal; Candle extinguishers of precious metal; Candle holders; Candle holders not of precious metal; Candle holders of precious metal; Candle holders of wrought iron; Candle jars [holders]; Candle rings; Candle rings, not of precious metal; Candle rings of precious metal; Candle snuffers; Candle snuffers, not of precious metal; Candle sticks; Candle warmers, electric and non-electric; Candlesticks; Candlesticks of glass; Candlesticks of precious metal; Candlesticks with wind protection*

74.The Applicant's goods set out above comprise candle holders, of one sort or another, or part thereto. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or

²³ Glass collars on candle sockets to catch wax drips.

complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Hand tools for the application of cosmetics; Holders for cosmetics; Cosmetics applicators; Cosmetics brushes; Racks for cosmetics; Cases adapted for cosmetic utensils; Appliances for removing make-up, electric; Appliances for removing make-up, non-electric; Applicator sticks for applying makeup; Applicator sticks for applying make-up; Applicators for applying eye make-up; Applicators for cosmetics*

75. I compare the Applicant's goods to the Opponent's class 3 term *Skin masks* (WO0000001570689). Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. I recognise that users and trade channels may overlap somewhat, but I do not consider this sufficient to support a finding of similarity between the parties' goods. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Boot jacks; Boot removers; Boot stretchers; Boot stretchers of wood; Boot trees; Boot trees [stretchers]; Bootjacks*

76. The Applicant's goods comprise aids to put on/remove boots or storage solutions for boots. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Brushes for cleaning babies' feeding bottles; Brushes for feeding bottle teats; Brushes for feeding bottles;*

77. I compare these goods to the Opponent's *Hairbrushes* (UK00003631214). The parties' goods will share a purpose only to the very broad extent that both are used

for brushing. The goods will differ in terms of specific purposes; the Applicant's goods used for cleaning items for feeding babies as opposed to the Opponent's goods intended to groom the hair. Users will be distinct; the average consumer of the Applicant's goods will be a parent or carer of infants. Trade channels will also be different; one would not expect both hairbrushes and brushes for cleaning baby feeding equipment to originate from the same undertaking. In terms of physical nature, the respective goods will be similar only to the extent that both are types of brushes. The Applicant's brushes will likely be much smaller in size. The goods are neither competitive nor complementary. I find the parties' goods to have a low level of similarity.

78. I will also compare the Applicant's goods set out above to the Opponent's class 35 services *Online retail services connected with the sale of baby care products [...]* (UK00003519345).

79. When comparing goods against the retailing of goods, I bear in mind *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, in which the General Court held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

80. I also note that on the basis of the European courts' judgments in *Sanco SA v OHIM*,²⁴ and *Assembled Investments (Proprietary) Ltd v. OHIM*,²⁵ upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*,²⁶ Geoffrey Hobbs QC (as he then was) sitting as the Appointed Person in the MissBoo case,²⁷ concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently

²⁴ Case C-411/13P

²⁵ Case T-105/05, at paragraphs [30] to [35] of the judgment

²⁶ Case C-398/07P

²⁷ *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14; see paragraph 9 of that ruling.

pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

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

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

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

81. The Opponent's services entail bringing together and making available for sale online 'baby products'. The goods to which the Opponent's online retail services relate will encompass the Applicant's goods enumerated above. The Applicant's goods (with the exception of potties, which are used for toileting babies) are intended to clean babies' feeding bottles and teats. The respective goods and services will therefore differ in purpose and methods of use. There will be user overlap; purchasers of the Opponent's goods will, in many cases, necessarily also be consumers of the Holder's retail services. The goods and services are different in nature; the Applicant's goods being tangible items as compared to the Opponent's acts of service. Trade channels are shared; both the Opponent's retail services and the goods to which they relate will be accessed/purchased from the same online stores. In my view, although the Applicant's goods are necessary in order to deliver the retail services in respect of those goods, I consider it unlikely that the average consumer would presume that the provider of the retail services in respect of those goods also produces those goods. I find the parties' goods and services to have a low level of similarity.

82. I now compare the Applicant's *Babies' potties* to the Opponent's *Baby bath tubs*.

The purposes of the respective goods are very different; one is used for bathing a baby and the other for toileting. Users will overlap; average consumers of both will be parents or carers of infants. Trade channels will also be shared. The physical nature of the goods will differ; the goods being different in shape and size. The goods are neither competitive nor complementary. I find the parties' goods to have a low level of similarity.

Babies' potties will also have a low level of similarity to the Opponent's *Online retail services connected with the sale of baby care products [...]* (UK00003519345), for the same reasons provided above at [81].

Applicant's goods: *Bottle brushes; Bottle cleaning brushes*

83. I compare these goods to the Opponent's *Hairbrushes* UK00003631214. The parties' goods will share a purpose only to the very broad extent that both are types of brushes. Their specific purposes are different; the Applicant's goods used to clean bottles as opposed to the Opponent's *hairbrushes* used to groom the hair. Users will be different; the Applicant's goods will be purchased by those intending to clean bottles while the Opponent's goods will be purchased by those seeking to groom their hair. Trade channels will also be distinct. The physical nature of the parties' goods will differ in so far as the Opponent's hairbrushes will typically be larger than the Applicant's brushes. The goods are neither competitive nor complementary. I find the parties' goods to have a low level of similarity.

Applicant's goods: *Animal bristles [brushware]; Bristles (Animal -) [brushware]; Brush making materials; [...] brush-making articles; Brush-making (Material for -); Brush-making materials; Cattle hair for brushes*

84. I compare the Applicant's goods to the Opponent's *Hairbrushes* (UK00003631214). They will differ in specific purposes in that the Applicant's goods are components, or tools used in the making, of brushes as opposed to the Opponent's finished goods, hairbrushes, used to groom the hair. Users will overlap only in the very general sense that many people have a head of hair that they

choose to brush. Methods of use will differ. Trade channels will, in my view, be distinct; the Applicant's goods would likely be sold by wholesalers or specialist suppliers as opposed to the Opponent's goods which would be sold by retailers. The physical nature of the parties' goods will differ by virtue of the Opponent's goods being finished articles as opposed to bristles and other components of brushes. The parties' goods are not in competition; neither is substitutable for the other. I do not find complementarity either; although the Applicant's goods are necessary and/or important for the making of hairbrushes, the average consumer would unlikely presume both goods to originate from the same undertaking. I find the goods to have only a very low level of similarity.

Applicant's goods: Aerosol dispensers, not for medical purposes; Air fragrancing apparatus; Aromatic oil diffusers, other than reed diffusers; Aromatic oil diffusers, other than reed diffusers, electric and non-electric; Atomisers for household use; Burners (Perfume -); Perfume atomisers; Perfume atomizers [empty]; Perfume burners; Perfume burners [other than electric]; Perfume sprayers; Perfume sprayers [sold empty]; Perfume sprays, sold empty; Perfume vaporizers; Burners (Perfume -); Vaporizers for perfume [empty]; Vaporizers for perfume sold empty.

85. I compare the Applicant's goods to the Opponent's *Essential oils for household use* (UK00003631214). The Applicant's goods comprise receptacles for scented liquids to be either atomised/vaporised or heated so that the fragrance is released into the air as a vapour or very fine droplets. The Opponent's essential oils are one such scented liquid that might be used with the Applicant's goods. The parties' goods therefore overlap in purpose somewhat. Users will therefore also overlap. Trade channels will often be shared; both parties' goods being sold via the same retail outlets. The goods will differ greatly in terms of physical nature; the Applicant's goods having the form of glass bottles or metal or ceramic burners as compared to the Opponent's oils. There is no competition between the parties' goods, neither good being substitutable for the other. I do, however, find the goods to be complementary in certain instances; the Applicant's goods are important for the Opponent essential oils where the user wishes to use the oils to fragrance a room

and the average consumer may presume both to originate from the same undertaking. I find the parties' goods to be similar to no more than a medium degree.

Applicant's goods: *Apparatus for cleaning teeth and gums using high pressure water for home use; Battery-powered dental flossers*

86. I compare the Applicant's goods to the Opponent's *Manual dental flossers* (UK00003631214). The parties' goods have a common purpose i.e. that of cleaning the teeth and gums by dislodging food and plaque. I find that users and trade channels will be shared. Methods of use will be similar to the extent that either floss or a jet of water will be precisely directed to the teeth and gums in order to clean them. The physical nature of the goods will differ, the Applicant's goods being electric appliances as opposed to the Opponent's manual implements. The goods are competitive; a consumer might deliberate over whether to purchase a manual dental flosser over either of the Applicant's goods. I do not consider the goods to be complementary; although the average consumer may presume both to originate from the same undertaking, neither is necessary or important for each other. I find the parties' goods to be highly similar.

87. I now consider the Applicant's term *Back scratchers*. These goods typically consist of a long-handled implement whose purpose is to scratch an itch in a hard-to-reach place. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

88. I now compare the Applicant's *Bathroom basins [receptacles]* to the Opponent's *Baby bath tubs* (UK00003631214). The respective goods will share a purpose to the extent that both are designed to hold water for washing. However, the goods will diverge in their specific purposes; the Opponent's goods are unplumbed receptacles for bathing infants as opposed to the Applicant's 'plumbed in' basins, typically used for washing the hands and face (and sometimes laundry that needs to be washed by hand). Users will overlap only to the very broad extent that the

majority of the population will use a bathroom basin. In my view, trade channels will, in most cases, be distinct; the Applicant's goods most likely sold in specialist shops selling bathroom fittings/goods to be installed in the home. Methods of use will differ; the Applicant's goods must be operated by way of taps as opposed to the Opponent's freestanding vessels which are not connected to a water source. The goods will also differ in physical nature; baby bath tubs typically being made out of plastic as compared to the Applicant's goods which are typically made from ceramic, resin, stainless steel or composite materials. Although a bathroom basin could be used to bath a baby, I do not consider the parties' goods to be realistic substitutes because an average consumer would not deliberate over whether to purchase one over the other. There is no complementarity, either. I find the goods to be dissimilar. If I am wrong about that, then the goods are similar only to a very low degree.

Applicant's goods: *Buckets for industrial use; Carboys*²⁸

89. These goods, in my view, comprise fairly large receptacles intended for use in large-scale production/manufacturing. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

90. I now consider the Applicant's *Apothecary jars*. It is fairly well known that the original use for apothecary jars was to store chemical compounds or elements in chemist/pharmacy shops at the time when medicines were made by hand by the pharmacists themselves. This practice no longer takes place. The Applicant's goods are, in my view, now coveted as decorative storage jars. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

²⁸ Carboys are large globular glass bottles typically used for holding acids or other corrosive liquids.

Applicant's goods: *Bathroom glass holder; Bathroom pails*

91. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Applicant's goods: *Body cleanser dispensers; Body cleanser holders*

92. I compare these goods to the Opponent's *Bath gel* (UK00003631214). The goods will differ in purpose; the Applicant's goods being receptacles to dispense body cleansers or storage solutions therefor, as opposed to the Opponent's bath gels which are used to cleanse the body while bathing. Users will overlap and trade channels may overlap in some instances. The goods will differ in physical nature, the Opponent's goods being gels as opposed to the Applicant's receptacles or holders. The goods are neither competitive nor complementary. I find the goods to have a very low level of similarity.

93. I find that the Applicant's terms *Bottles; Bottles for pharmaceuticals sold empty* and *Bottles, sold empty* will encompass the Opponent's term *bottles for medical use* (UK00003519345). These goods are therefore 'Merici' identical.

Applicant's goods: *Perfume bottles; Perfume bottles sold empty*

94. I compare these goods to the Opponent's *Essential oils* (UK00003631214). The Applicant's goods will, to my mind, include decorative perfume bottles targeted at the general public, as well as bottles sold to professionals in the fragrance industry. The purposes of the goods will differ; the Applicant's goods intended as receptacles for perfume as opposed to the Opponent's Essential oils whose uses have already been noted. Users will be distinct; the bottles will be purchased by those seeking a receptacle for fragrances whereas essential oils will be purchased for different reasons i.e. for relaxation, aromatherapy or to impart a fragrance. Trade channels will be distinct; one would not normally expect an undertaking to provide both bottles and essential oils. The goods will differ in physical nature, one

being a receptacle as opposed to the other being an oil. I do not find the goods to be competitive. I do not find complementarity, either. I find the parties' goods to be dissimilar.

Applicant's goods: *Cases adapted for toilet utensils; Cases for toiletry articles*

95. I compare these goods to the Opponent's *Toothbrushes* (UK00003631214). The Applicant's goods will, to my mind, include washbags/toiletry bags. The parties' goods will differ in purpose; the Applicant's goods being receptacles/cases as opposed to the Opponent's brushes. Users will overlap. Trade channels may also overlap somewhat. The goods will differ in physical nature; the Applicant's goods being cases as opposed to the Opponent's toothbrushes. The goods are neither competitive nor complementary. I find the goods to be dissimilar.

Applicant's goods: *Caddies for holding hair accessories for household and domestic use; Brush holders*

96. I compare these goods to the Opponent's *Hairbrushes* (UK00003631214). The goods will differ in purpose; the Applicant's goods being storage solutions for brushes as opposed to the Opponent's brushes for personal grooming. Users will overlap. Trade channels may overlap somewhat. The goods will differ in physical nature; the Applicant's goods being caddies or holders as opposed to the Opponent's hairbrushes. I do not find the goods to be competitive nor complementary. Although the Applicant's goods are useful for storing the Opponent's goods, I consider it unlikely that an average consumer would presume both to originate from the same undertaking. I find the goods to be dissimilar. If I am wrong about that, then the goods will have only a very low level of similarity.

97. I now compare the Applicant's *Cases (Comb -)* to the Opponent's *Combs* (UK00003631214). The goods will differ in purpose, the Applicant's goods being cases as opposed to the Opponent's goods being combs for personal grooming. Users will overlap. Trade channels may overlap somewhat. The goods will differ in physical nature; the Applicant's goods being cases as opposed to the Opponent's combs. I do not find the goods to be competitive, neither being substitutable for the

other. I do, however, find complementarity. The Applicant's goods will be used to store the Opponent's combs and the average consumer may presume both to originate from the same undertaking. I find the goods to have a low - medium level of similarity.

Applicant's goods: *Boxes for dispensing paper towels; Boxes of metal, for dispensing paper towels*

98. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

99. I now compare the Applicant's *Brushes for cleaning medical instruments* to the Opponent's *Thermometers for medical purposes* (UK00003519345). The parties' goods will have very different purposes, the Applicant's goods intended to clean as opposed to the Opponent's thermometers whose function is to measure a patient's temperature. Although the Applicant's brushes may be used to clean the Opponent's thermometers, considering purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

100. I now consider the Applicant's *Boxes for holding artificial teeth*. Having considered the purposes, users, trade channels, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

101. I now consider the Applicant's *Boxes (Soap -)*. Although these goods may share trade channels with some of the Opponent's goods e.g. toiletry articles such as toothbrushes, and users of both parties' goods may overlap, these factors are not, in my view, sufficient to support a finding of similarity between the parties' goods.

Having also considered the purposes, methods of use, physical natures and whether there is any competition or complementarity between the parties' respective goods and services, I do not find any level of similarity. The Applicant's goods are dissimilar to the goods/services of the Opponent.

Average consumer and the purchasing act

102. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. The word "average" denotes that the person is typical. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

103. The majority of the goods that come into play in these proceedings will be purchased by the general public. The purchasing act will be primarily visual. The goods will be self-selected from shelves in physical shops. In the case of online purchases, the goods will be 'clicked' upon and the product information read before making a purchase. There may also be an aural aspect to the purchasing process, for instance, where a purchaser has made requests to retail staff or has heard of the retailer by 'word of mouth'. The relevant goods in class 3 will have relatively low price-points ranging from a few pounds for a moisturiser, for example, to over a hundred pounds for some perfumes. Many of the goods will be fairly frequent purchases. In my view, the average consumer would pay no more than a medium level of attention when selecting these goods, taking into account factors such as, *inter alia*: the ingredients or suitability for one's skin.

104. In my view, the average consumer of the class 21 goods (with the exception of those set out below) will be the general public. The purchasing act will be the same as that set out above at [103]. These goods will also have a relatively low price-point ranging from a few pounds for a *toothbrush* or *perfume burner* to tens of pounds for an electric appliance for cleaning the teeth. The majority of these goods will be fairly frequent purchases. I find that the average consumer would pay no more than a medium level of attention when purchasing these goods, taking into

account factors such as, *inter alia*, suitability for one's needs (e.g. teeth-cleaning apparatus) or how the goods look (e.g. perfume burners).

105. The following goods will be purchased primarily by the professional public:

Class 3: Perfume oils for the manufacture of cosmetic preparations; Aromatics for perfumes; Bases for flower perfumes; Extracts of flowers [perfumes]; Extracts of flowers being perfumes; Flower perfumes (Bases for -); Flowers (Extracts of -); Perfumes for industrial purposes; Extracts of perfumes; Ionone [perfumery]; Mint for perfumery; Musk [perfumery]; Synthetic perfumery; Synthetic vanillin [perfumery]; Vanilla perfumery; Amber [perfume]; Cedarwood perfumery; fumigation preparations [perfumes].

Class 21: Bottles for pharmaceuticals sold empty; Animal bristles [brushware]; Bristles (Animal -) [brushware]; Brush making materials; [...] brush-making articles; Brush-making (Material for -); Brush-making materials; Cattle hair for brushes

106. In my view, the professional purchaser will display a medium-high level of attention when purchasing these goods. The purchasing act will be primarily visual; the goods will likely be inspected in person or product listings viewed in a catalogue or online. The frequency of these purchases would depend on the manufacturer's output and how many goods were ordered at any one time, but, in my view, these purchases would not be infrequent for those in the business of manufacture. I consider that the price of these goods, as materials to manufacture other products, would depend on the quantity purchased. In my view, manufacturers would likely place bulk orders and so the outlay would often be significant. Factors taken into account during the purchasing process will likely include, *inter alia*: the purchaser's business needs; whether the supplier can fulfil the purchaser's requirements.

Comparison of the marks

Opponent's (earlier marks)	Applicant's (contested) mark
i) WO0000001570689 FRIDA MOM	FRIDA LONDON
ii) UK00003519345 FRIDABABY	
iii) UK00003631214 Frida Baby	

107. 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.”

108. 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.

109. The Opponent relies on three earlier marks.

Mark WO0000001570689 is a word mark²⁹ consisting of 'FRIDA MOM'. The overall impression resides in the mark in its entirety, with the word 'FRIDA' being the more distinctive element because the 'MOM' element will, in my view, be perceived as an indication that the goods are aimed at mothers.

Marks UK00003519345 and UK00003631214 are, in my view, identical.³⁰ Both marks are word marks consisting of the two elements 'FRIDA' and 'BABY'. To my mind, the fact that the two elements are conjoined in one of the marks is insignificant. I consider that the average consumer will recognise the word 'Baby' in the conjoined mark and perceive the conjoined elements as separate words. For each of these marks, the overall impression resides in the mark in its entirety, with the word 'Frida' being more distinctive because 'Baby' will, in my view, be perceived as an indication that the goods relate to babies.

²⁹ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

' [...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

³⁰ In *S. A. Société LTJ Diffusion v. Sadas Vertbaudet SA*³⁰, the Court of Justice of the European Union ('CJEU') held that:

'54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by the average consumer.'

110. The Applicant's mark is a word mark and consists of the words 'FRIDA LONDON'. The overall impression resides in the mark in its entirety, with the word 'FRIDA' being the more distinctive element because 'LONDON' will be seen simply as the geographical location of the undertaking.

Comparison with the Opponent's mark 'FRIDA MOM' (WO0000001570689):

Visual comparison

111. Both parties' marks are 'two-word' word marks sharing an identical first word 'Frida'. Points of visual difference are:

- the presence of the element 'MOM' in the Opponent's mark, which is absent from the Applicant's mark;
- the presence of the word 'LONDON' in the Applicant's mark, which is absent from the Opponent's mark.

I find the parties' marks to be visually similar to a medium degree.

Aural comparison

112. The Applicant's mark will be articulated as 'FREE-DUH LUN-DUN'. The Opponent's mark will be articulated as 'FREE-DUH MOM'. The marks share the first two syllables 'FREE-DUH'. Points of aural difference are:

- the fact that the Applicant's mark is three syllables long as compared to the Opponent's two syllables;
- the 'MOM' sound after the 'FREE-DUH' element present in the Opponent's mark, but absent from the Applicant's mark;
- the 'LUN-DUN' element present in the Applicant's mark, but absent from the Opponent's mark.

I find the parties' marks to be aurally similar to a medium degree.

Conceptual comparison

113. The 'FRIDA' element of the parties' marks will, in my view, be known by the average consumer as a girl's name. The 'MOM' element of the Opponent's mark will, to my mind, be understood as a colloquial term for 'mother'. I find that the Opponent's mark will be perceived by the average consumer as a brand selling

goods or services aimed at mothers. It may also convey the idea of a 'mom' named 'Frida'. The 'LONDON' element of the Applicant's mark will, in my view, be seen simply as a reference to the geographical location of the undertaking responsible for the goods. The impression created by the Applicant's mark 'FRIDA LONDON' will be of a brand named 'Frida', perceived as a woman's name, based in London. Whether the Opponent's mark is perceived by the average consumer as 'a mom named Frida' or as a brand 'Frida' whose goods are aimed at mothers, it remains the case, in my view, that the 'Frida' element will, in both parties' marks, be perceived as a girl or woman's name. I find the parties' marks to be conceptually similar to a medium degree.

Comparison with the Opponent's marks 'FRIDABABY' (UK00003519345) and 'Frida Baby' (UK00003631214):

Visual comparison

114. Both parties' marks are composed of two 'word' elements and share the first element 'FRIDA'. Points of visual difference are:

- the presence of the 'BABY' element in the Opponent's mark, which is absent from the Applicant's mark;
- the presence of the word 'LONDON' in the Applicant's mark, which is absent from the Opponent's mark.

I find the parties' respective marks to be visually similar to a medium degree.

Aural comparison

115. The Opponent's marks will be articulated as 'FREE-DUH BAY-BEE'. Both parties' marks comprise four syllables and share the first two syllables 'FREE-DUH'. Points of aural difference are:

- the presence of the 'bay-bee' element in the Opponent's mark, but absent from the Applicant's mark;
- the 'LUN-DUN' element present in the Applicant's mark, but absent from the Opponent's mark.

I find the parties' marks to be aurally similar to a medium degree.

Conceptual comparison

116. The 'BABY' element of the Opponent's marks UK00003519345 and UK00003631214 is a dictionary word with which the average UK consumer will be very familiar and will be understood as denoting a young infant. The Opponent's marks 'FRIDABABY' and 'Frida Baby' will, to my mind, be perceived as brands selling goods or services intended for babies and infants.

I find the parties' marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

117. 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 *WindsurfingChiemsee 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).”

118. Registered trade marks possess varying degrees of inherent distinctive character: perhaps lower where a mark may be suggestive or allusive of a characteristic of the goods, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities.

Earlier mark FRIDA MOM (WO0000001570689)

119. ‘FRIDA’ is likely to be understood by the average consumer as a girl’s name. The word ‘MOM’ is an English dictionary word with which the average consumer will be very familiar. I consider that the words ‘MOM’ is somewhat allusive of the goods to the extent that it suggests that the goods relate to mothers. The word ‘FRIDA’ will be the more distinctive element of the mark. Notwithstanding the above-mentioned allusion, I find that the mark has a low-average degree of inherent distinctive character.

Earlier marks FRIDABABY and Frida Baby

120. The word ‘BABY’ is an English dictionary word with which the average consumer will be very familiar. I consider that the word ‘BABY’ is somewhat allusive of the goods to the extent that it suggests that the goods relate to babies. As with the above-mentioned earlier mark, the word ‘FRIDA’ will be the more distinctive element of the marks. Notwithstanding the above-mentioned allusion, I find that the marks have a low-average degree of inherent distinctive character.

121. The Opponent has adduced evidence intended to demonstrate that ‘Frida’ ‘is a rare name in the United Kingdom and USA and that it is correspondingly distinctive.’³¹ The Opponent cites the fact that the name no longer exists on America’s top 1000 list as support for its argument.³² Whilst this is noted, evidence relating to the American market is not relevant to the assessment of a mark’s inherent distinctiveness for the average UK consumer. Furthermore, whether or not ‘Frida’ is a popular name choice for a child is of little relevance to whether ‘Frida’

³¹ Witness Statement of James Philip Cornish, at paragraph [3].

³² As above.

will be recognised as a name by the average consumer. An unpopular name is not necessarily an unfamiliar one.

122. The Opponent has not adduced material to demonstrate: the market share held by the marks; the geographical spread of sales in the UK; marketing spend or annual turnover figures. The totality of evidence available is not sufficient for me to find that the level of distinctiveness of the mark can be raised above the finding that I have made for the mark's inherent distinctive character i.e. that of a low-average degree.

123. On the evidence available to me, I am unable to form a view as to whether the Opponent's marks enjoy an enhanced level of inherent distinctive character.

Likelihood of confusion

124. Confusion can be direct or indirect. Mr Iain Purvis Q. C., as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v Back Beat Inc*³³. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*³⁴, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or economically linked undertaking.

125. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [12].

³³ Case BL O/375/10 at [16].

³⁴ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

When considering all relevant factors ‘in the round’, I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

126. For each of the Opponent’s three earlier marks, I have found a number of the Applicant’s goods to have some level of similarity with the Opponent’s goods. The levels of similarity range from identical – very low, as follows:

FRIDA MOM (WO0000001570689)

Identical:	<p>Class 3</p> <p><i>skin masks [cosmetics]; Functional cosmetics; Humectant preparations [cosmetics]; Multifunctional cosmetics; Natural cosmetics; Non-medicated cosmetics; Non-medicated cosmetics and toiletry preparations; Organic cosmetics; Cosmetics; Cosmetics and cosmetic preparations; Cosmetics containing hyaluronic acid; Cosmetics containing keratin; Cosmetics containing panthenol; Cosmetics for personal use; Cosmetics for the treatment of dry skin; Cosmetics for use in the treatment of wrinkled skin; Cosmetics for use on the skin; Cosmetics in the form of creams; Cosmetics in the form of gels; Cosmetics in the form of lotions; Cosmetics preparations; Pores tightening mask packs used as cosmetics; Skin care cosmetics; Skincare cosmetics; Cosmetics for children; Refill packs for cosmetics dispensers</i></p>
Medium similarity	<p>Class 3</p> <p><i>Cosmetics all for sale in kit form; Paper hand towels impregnated with cosmetics; Tissues impregnated with cosmetics; Perfumed tissues; Skin fresheners [cosmetics]</i></p>
Low – medium similarity	<p>Class 3</p> <p><i>Hair cosmetics; Cosmetics for the use on the hair</i></p>

Low similarity	<p>Class 3</p> <p><i>Glitter in spray form for use as a cosmetics; Liners [cosmetics] for the eyes; Lip stains [cosmetics]; Cosmetics in the form of eye shadow; Cosmetics in the form of powders; Cosmetics in the form of rouge; Powder compact refills [cosmetics]; Powder compacts [cosmetics]; Smoothing emulsions [cosmetics]; Solid powder for compacts [cosmetics]; Sun blocking lipsticks [cosmetics]; Temporary tattoo transfers for use as cosmetics; Lip cosmetics; Cosmetics for protecting the skin from sunburn; Sun barriers [cosmetics]; Sun block [cosmetics]; Sun blocking oils [cosmetics]; Sun blocking preparations [cosmetics]; Sun protecting creams [cosmetics]; Applicant's goods: Cosmetics for suntanning; self-tanning preparations [cosmetics]; Sun-tanning preparations [cosmetics]; Suntan lotion [cosmetics]; Suntan oils [cosmetics]; Suntanning oil [cosmetics]; Tanning gels [cosmetics]; Tanning milks [cosmetics]; Tanning oils [cosmetics]; Tanning preparations [cosmetics] ; Cosmetics for eye-brows; Cosmetics for eye-lashes; Perfumed powder; Perfumed powder [for cosmetic use]; Perfumed powders; Perfumed powders [for cosmetic use]</i></p>
Very low similarity	<p>Class 3</p> <p><i>Impregnated cleaning pads impregnated with cosmetics</i></p>

FRIDABABY (UK00003519345)

Identical	<p>Class 21</p> <p><i>Bottles; Bottles for pharmaceuticals sold empty; Bottles, sold empty</i></p>
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Frida Baby (UK00003631214)

Identical	<p>Class 3</p> <p><i>Essential oils as perfume for laundry purposes; Natural oils for perfumes; Oils for perfumes and scents; Peppermint oil [perfumery]; Perfumed oils for skin care; Perfume oils; Perfume oils for the</i></p>
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	<p><i>manufacture of cosmetic preparations; Aromatics for perfumes; Bases for flower perfumes; Extracts of flowers [perfumes]; Extracts of flowers being perfumes; Flower perfumes (Bases for -); Flowers (Extracts of -) [perfumes]; Perfumery, essential oils</i></p> <p>Class 21</p> <p><i>Baby finger toothbrushes; Brush goods; Brushes; Brushes [...]; Brushes (except paint brushes); Brushes (except paintbrushes); Brushes, except paintbrushes; Baby bath tubs; Baby baths; Baby baths, portable; Baby bathtubs; Baths (Baby -), portable; Brushes for cleaning; Brushes (Electric -), except parts of machines</i></p>
Highly similar:	<p>Class 21</p> <p><i>Apparatus for cleaning teeth and gums using high pressure water for home use; Battery-powered dental flossers</i></p>
Medium – high similarity	<p>Class 3</p> <p><i>Room perfume sprays; Room perfumes in spray form; Milks [cosmetics]; Cosmetics in the form of milks</i></p>
Medium similarity	<p>Class 3</p> <p><i>Perfumed soap; Perfumed soaps; Deodorants for personal use [perfumery]; Body deodorants [perfumery]; Perfumes for industrial purposes</i></p>
Similar to no more than a medium degree	<p>Class 3</p> <p><i>Cosmetics in the form of oils; Perfume; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumes; Perfumes for ceramics; Perfumes in solid form; Liquid perfumes; Natural perfumery; Solid perfumes; Extracts of perfumes; Ionone [perfumery]; Mint for perfumery; Musk [perfumery]; Synthetic perfumery; Synthetic vanillin [perfumery]; Vanilla perfumery; Amber</i></p>

	<p><i>[perfume]; Cedarwood perfumery; fumigation preparations [perfumes].</i></p> <p>Class 21 <i>Aerosol dispensers, not for medical purposes; Air fragrancing apparatus; Aromatic oil diffusers, other than reed diffusers; Aromatic oil diffusers, other than reed diffusers, electric and non-electric; Atomisers for household use; Burners (Perfume -); Perfume atomisers; Perfume atomizers [empty]; Perfume burners; Perfume burners [other than electric]; Perfume sprayers; Perfume sprayers [sold empty]; Perfume sprays, sold empty; Perfume vaporizers; Burners (Perfume -); Vaporizers for perfume [empty]; Vaporizers for perfume sold empty.</i></p>
Low – medium similarity	<p>Class 3 <i>Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfume water; Perfumed toilet waters; Perfumed water; Cushions impregnated with perfumed substances; Perfumed potpourris; Perfumed sachets.</i></p> <p>Class 21 <i>Cases (Comb -)</i></p>
Low similarity	<p>Class 3 <i>Moisturisers [cosmetics]; Mousses [cosmetics]; Skin moisturizers used as cosmetics; Skin recovery creams [cosmetics]; remover [cosmetics]; Natural cosmetics; Night creams [cosmetics]</i></p> <p>Class 21 <i>Abrasive mitts for scrubbing the skin; Abrasive pads; Abrasive sponges for scrubbing the skin; Bath brushes; Bath sponges; Body scrubbing puffs; Body sponges; Brushes for personal hygiene; Brushes for cleaning babies' feeding bottles; Brushes for feeding</i></p>

	<i>bottle teats; Brushes for feeding bottles; Babies' potties; Bottle brushes; Bottle cleaning brushes</i>
Very low similarity	<p>Class 3 <i>Teeth whitening strips impregnated with teeth whitening preparations [cosmetics]</i></p> <p>Class 21 <i>Animal bristles [brushware]; Bristles (Animal -) [brushware]; Brush making materials; [...] brush-making articles; Brush-making (Material for -); Brush-making materials; Cattle hair for brushes; Body cleanser dispensers; Body cleanser holders</i></p>

127. In my view, despite the identity and similarity found between some of the parties' goods, the net effect of the visual, aural and conceptual differences is sufficient to overcome the similarities that I have identified. This is the case in relation to all three earlier marks. Notwithstanding the principle of imperfect recollection, the average consumer will, in my view, notice the presence of the elements 'MOM' and 'BABY' in the Opponent's marks and 'LONDON' in the Applicant's mark. I find this to be the case even though I consider the elements 'MOM', 'BABY' and 'LONDON' to be somewhat allusive of the relevant goods and therefore the less distinctive elements of the marks because the average consumer will nevertheless register their presence visually. I find that there is no likelihood of direct confusion.

128. I now consider whether there is a likelihood of indirect confusion. I note that in the recent case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper

basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

129. I have borne in mind *Whyte and Mackay*³⁵ in which it was held that where an average consumer perceives that a composite mark consists of two or more elements, one of which has a distinctive significance independent of the mark as a whole, confusion may occur as a result of the similarity/identity of that element to the earlier mark. In my view, the element ‘FRIDA’ retains its independent distinctive character when it becomes part of the Applicant’s mark. The ‘LONDON’ element of the Applicant’s mark will have a low level of distinctiveness. I consider marks including the name of a geographical location (e.g. London, Paris, New York) to be ubiquitous and that the average consumer will therefore be accustomed to seeing them. Therefore, in my view, ‘FRIDA’ is the more distinctive element of the Applicant’s mark.

130. Mr Purvis Q. C.³⁶, as the Appointed Person, identified the following categories in *L.A. Sugar Limited v Back Beat Inc*³⁷ where a finding of indirect confusion might be made:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

³⁵ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271.

³⁶ As he then was. Since the accession of King Charles III to the throne, counsel previously known as ‘Q.C.’ are known as ‘K.C.’.

³⁷ Case BL O/375/10

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

131. I have found the parties' marks to be visually, aurally and conceptually similar to a medium degree. With respect to each of the Opponent's three earlier marks, I have found a number of the Applicant's goods to be identical, or to have a level of similarity at least within the medium range, to the Opponent's goods. The earlier marks have been found to be inherently distinctive to a low – average degree. The first element of both parties' marks, 'FRIDA', is the more inherently distinctive element in each mark. The 'suffixes' to each of the parties' marks are lower in distinctive character by virtue of being somewhat allusive of the relevant goods (i.e. the elements 'MOM' and 'BABY') or perceived as referring to the geographical location of the undertaking (i.e. 'LONDON'). In my view, the instant case falls within category (b). I find this to be the case with all three earlier marks. I consider that the average consumer will perceive the parties' marks as brands relating to either the same or economically-related undertakings. The Opponent's marks will be perceived, respectively, as sub-brands related to goods aimed at mothers or related to baby care, but perhaps part of an overarching brand 'FRIDA LONDON', for example. I find that there is a likelihood of indirect confusion in respect of all three earlier marks. I find this to be the case even where the average consumer is a member of the professional public

132. There is no likelihood of confusion in relation to the goods that I have found to be dissimilar or to have a level of similarity between low and very low.

Conclusion

133. The Opposition has been partially successful. Subject to any successful appeal:

- The Application is **refused** in respect of the following goods:

Class 3: *skin masks [cosmetics]; Functional cosmetics; Humectant preparations [cosmetics]; Multifunctional cosmetics; Natural cosmetics; Non-medicated cosmetics; Non-medicated cosmetics and toiletry preparations; Organic cosmetics; Cosmetics; Cosmetics and cosmetic preparations; Cosmetics containing hyaluronic acid; Cosmetics containing keratin; Cosmetics containing panthenol; Cosmetics for personal use; Cosmetics for the treatment of dry skin; Cosmetics for use in the treatment of wrinkled skin; Cosmetics for use on the skin; Cosmetics in the form of creams; Cosmetics in the form of gels; Cosmetics in the form of lotions; Cosmetics preparations; Pores tightening mask packs used as cosmetics; Skin care cosmetics; Skincare cosmetics; Cosmetics for children; Refill packs for cosmetics dispensers; Cosmetics all for sale in kit form; Paper hand towels impregnated with cosmetics; Tissues impregnated with cosmetics; Perfumed tissues; Skin fresheners [cosmetics]; Hair cosmetics; Cosmetics for the use on the hair; Essential oils as perfume for laundry purposes; Natural oils for perfumes; Oils for perfumes and scents; Peppermint oil [perfumery]; Perfumed oils for skin care; Perfume oils; Perfume oils for the manufacture of cosmetic preparations; Aromatics for perfumes; Bases for flower perfumes; Extracts of flowers [perfumes]; Extracts of flowers being perfumes; Flower perfumes (Bases for -); Flowers (Extracts of -) [perfumes]; Perfumery, essential oils; Room perfume sprays; Room perfumes in spray form; Milks [cosmetics]; Cosmetics in the form of milks; Perfumed soap; Perfumed soaps; Deodorants for personal use [perfumery]; Body deodorants [perfumery]; Perfumes for industrial purposes; Cosmetics in the form of oils; Perfume; Perfumeries; Perfumery; Perfumery and fragrances; Perfumery products; Perfumes; Perfumes for ceramics; Perfumes in solid form; Liquid perfumes; Natural perfumery; Solid perfumes; Extracts of perfumes; Ionone [perfumery]; Mint for perfumery; Musk [perfumery]; Synthetic perfumery; Synthetic vanillin [perfumery]; Vanilla perfumery; Amber [perfume]; Cedarwood perfumery; fumigation preparations [perfumes]; Perfumed body lotions [toilet preparations]; Perfumed creams; Perfumed lotions [toilet preparations]; Perfume water; Perfumed toilet waters; Perfumed water; Cushions impregnated with perfumed substances; Perfumed potpourris; Perfumed sachets.*

Class 21: *Bottles; Bottles for pharmaceuticals sold empty; Bottles, sold empty; Baby finger toothbrushes; Brush goods; Brushes; Brushes [...]; Brushes (except*

paint brushes); Brushes (except paintbrushes); Brushes, except paintbrushes; Baby bath tubs; Baby baths; Baby baths, portable; Baby bathtubs; Baths (Baby -), portable; Brushes for cleaning; Brushes (Electric -), except parts of machines; Apparatus for cleaning teeth and gums using high pressure water for home use; Battery-powered dental flossers; Aerosol dispensers, not for medical purposes; Air fragrancing apparatus; Aromatic oil diffusers, other than reed diffusers; Aromatic oil diffusers, other than reed diffusers, electric and non-electric; Atomisers for household use; Burners (Perfume -); Perfume atomisers; Perfume atomizers [empty]; Perfume burners; Perfume burners [other than electric]; Perfume sprayers; Perfume sprayers [sold empty]; Perfume sprays, sold empty; Perfume vaporizers; Burners (Perfume -); Vaporizers for perfume [empty]; Vaporizers for perfume sold empty; Cases (Comb -)

- The Application may **proceed** in respect of the following goods only:

Class 3: *Glitter in spray form for use as a cosmetics; Liners [cosmetics] for the eyes; Lip stains [cosmetics]; Cosmetics in the form of eye shadow; Cosmetics in the form of powders; Cosmetics in the form of rouge; Powder compact refills [cosmetics]; Powder compacts [cosmetics]; Smoothing emulsions [cosmetics]; Solid powder for compacts [cosmetics]; Sun blocking lipsticks [cosmetics]; Temporary tattoo transfers for use as cosmetics; Lip cosmetics; Cosmetics for protecting the skin from sunburn; Sun barriers [cosmetics]; Sun block [cosmetics]; Sun blocking oils [cosmetics]; Sun blocking preparations [cosmetics]; Sun protecting creams [cosmetics]; Applicant's goods: Cosmetics for suntanning; self-tanning preparations [cosmetics]; Sun-tanning preparations [cosmetics]; Suntan lotion [cosmetics]; Suntan oils [cosmetics]; Suntanning oil [cosmetics]; Tanning gels [cosmetics]; Tanning milks [cosmetics]; Tanning oils [cosmetics]; Tanning preparations [cosmetics] ; Cosmetics for eye-brows; Cosmetics for eye-lashes; Perfumed powder; Perfumed powder [for cosmetic use]; Perfumed powders; Perfumed powders [for cosmetic use]; Impregnated cleaning pads impregnated with cosmetics; Moisturisers [cosmetics]; Mousses [cosmetics]; Skin moisturizers used as cosmetics; Skin recovery creams [cosmetics]; remover [cosmetics]; Natural cosmetics; Night creams [cosmetics]; Teeth whitening strips impregnated*

with teeth whitening preparations [cosmetics]; Perfumes for cardboard; Nail base coat [cosmetics]; Nail cosmetics; Nail paint [cosmetics]; Nail polish removers [cosmetics]; Nail primer [cosmetics]; Nail tips [cosmetics]; Nail varnish remover [cosmetics]; Cosmetics for animals; Cushions filled with perfumed substances.

Class 21: *Abrasive mitts for scrubbing the skin; Abrasive pads; Abrasive sponges for scrubbing the skin; Bath brushes; Bath sponges; Body scrubbing puffs; Body sponges; Brushes for personal hygiene; Brushes for cleaning babies' feeding bottles; Brushes for feeding bottle teats; Brushes for feeding bottles; Babies' potties; Bottle brushes; Bottle cleaning brushes; Animal bristles [brushware]; Bristles (Animal -) [brushware]; Brush making materials; [...] brush-making articles; Brush-making (Material for -); Brush-making materials; Cattle hair for brushes; Body cleanser dispensers; Body cleanser holders; 3D wall art made of terra-cotta; 3D wall art of made of ceramic; 3D wall art of made of earthenware; 3D wall art of made of glass; 3D wall art of made of porcelain; Artificial nest eggs; Art objects of glass; Artworks of glass; Busts made of china; Busts made of earthenware; Busts made of glass; Busts made of terra cotta; Busts of china; Busts of china, terra-cotta or glass; Busts of crystal; Busts of earthenware; Busts of glass; Busts of porcelain; Busts of porcelain, ceramic, earthenware or glass; Busts of porcelain, ceramic, earthenware, terra-cotta or glass; Busts of terra cotta; Ceramic ornaments; Ceramic figurines; Abrasive discs for kitchen [cleaning] purposes; Abrasive gloves for scrubbing vegetables; Abrasive instruments for kitchen [cleaning] purposes; Abrasive pads for kitchen or domestic purposes; Abrasive pads for kitchen purposes; Abrasive sponges for kitchen [cleaning] use; All-purpose portable household containers; Aluminium bakeware; Aluminium cookware; Aluminium moulds [kitchen utensils]; Aluminum water bottles; Aluminum water bottles, empty; Anti-reflecting glass; Anti-static cloths for household use; Apparatus for wax-polishing, non-electric; Articles for cleaning purposes; Articles for the care of clothing and footwear; Artificial sponges for household purposes; Asparagus tongs; Autoclaves (Non-electric -) for household use; Autoclaves, non-electric; Autoclaves, non-electric, for cooking; Autoclaves [pressure cookers], non-electric; Automobile oil funnels; Bakers' tinware; Bakeware; Bakeware [not toys]; Baking containers made of glass; Baking cups of paper; Baking dishes; Baking dishes made of earthenware; Baking dishes made of glass; Baking dishes made of*

porcelain; Baking mats; Baking sheets of common metal; Baking tins; Baking trays made of aluminium; Baking utensils; Banana hangers; Barbecue forks; Barbecue mitts; Barbecue tongs; Barbecue turners; Bases for plant pots; Basins; Basins [bowls]; Basins [receptacles]; Baskets for domestic use; Baskets for household purposes; Baskets for waste paper littering; Baskets for waste paper littering for household purposes; Baskets of common metal for domestic use; Baskets of common metal for household use; Basting brushes; Basting spoons; Basting spoons [cooking utensils]; Basting spoons, for kitchen use; Batter dispensers for kitchen use; Battery operated lint removers; Beaters (Carpet -), not being machines; Beaters, non-electric; Beaters (Non-electric -) for kitchen use; Beer glasses; Beer jugs; Beer mats not of paper or textile; Beer mugs; Beer pitchers; Beer steins; Bento boxes; Beverage coolers [containers]; Beverage glassware; Beverage stirrers; Beverage urns, non-electric; Beverages (Heat insulated containers for -); Beverageware; Bins (Dust -); Bins for household refuse; Biobased bottles; Biodegradable bottles; Biodegradable bowls; Biodegradable cups; Biodegradable paper pulp-based bowls; Biodegradable paper pulp-based cups; Biodegradable paper pulp-based plates; Biodegradable plates; Biodegradable trays; Biodegradable trays for domestic purposes; Biscuit cutters; Blenders for food [non-electric]; Blenders, non-electric, for household purposes; Boards (Ironing -); Bone china tableware [other than cutlery]; Bota bags; Bottle baskets coated with precious metal; Bottle buckets; Bottle coolers; Bottle coolers [receptacles]; Bottle cradles; Bottle gourds; Bottle openers; Bottle openers, electric and non-electric; Bottle openers [hand-operated]; Bottle openers incorporating knives; Bottle pourers; Bottles (Refrigerating -); Bottle stands; Bouquet holders; Bowls; Bowls [basins]; Bowls for candy; Bowls for floral decorations; Bowls for nuts; Bowls for plants; Bowls for sugar candy; Bowls (Glass -); Bowls made of precious metal; Bowls of precious metal; Boxes for biscuits; Boxes for candies; Boxes for dispensing paper serviettes; Boxes for sweetmeats; Boxes for sweets; Boxes of ceramics; Boxes of china; Boxes of earthenware; Boxes of glass; Boxes of porcelain; Boxes of precious metal for sweets; Brandy sniffers; Bread baskets; Bread baskets, domestic; Bread baskets for household purposes; Bread bins; Bread boards; Bread boxes; Bread tongs; Bread-cases [for kitchen use]; Broom handles; Broom handles, not of metal; Buckets; Buckets for household use; Buckets incorporating castors; Buckets incorporating mop wringers; Buckets made

of woven fabrics; Bud vases; Bulb basters; Butlers' trays; Butter coolers; Butter curlers; Butter dishes; Butter pans; Butter-dish covers; Buttonhooks; Cabarets [trays]; Cafetieres; Cake bases; Cake decorating tips and tubes; Cake domes; Cake molds; Cake molds [moulds]; Cake molds of common metal; Cake molds of non-metallic materials; Cake moulds; Cake moulds of common metal; Cake moulds of non-metallic materials; Cake pans; Cake plates; Cake rests; Cake rings; Cake servers; Cake stands; Cake stands of non-metallic materials; Cake tins; Cake trays; Camping grills; Candy boxes; Candy boxes, not of precious metal; Candy boxes of precious metal; Candy dishes; Canister sets; Canning rubber for household purposes; Carafes; Cardboard cups; Carpet beaters [hand instruments]; Carpet beaters (Non-electric -); Carpet beaters, not being machines; Carpet beaters [not being machines]; Carpet rakes; Carpet shampoo applicators (Non-electric -); Carpet sweepers; Carpet sweepers [non-electric]; Carpet sweepers (Non-electric -); Carver rests; Carving boards; Carving boards for kitchen use; Carving forks; Car washing mitts; Casseroles [dishes]; Cast stone containers for household; Cauldrons; Caviar coolers; Ceramic coin boxes; Ceramic hollowware; Ceramic mugs; Ceramic tableware; Animal activated animal feeders; Animal activated livestock feeders; Animal activated livestock waterers; Animal grooming gloves; Animal traps; Animal-activated pet feeders; Ant habitats; Ant vivaria; Aquaria and vivaria; Aquaria (Indoor -); Aquarium covers; Aquarium hoods; Aquarium ornaments; Aquariums; Attracting and killing insects (Electric devices for -); Automatic litter boxes for pets; Automatic pet feeders; Bait stations, empty, for feeding rodenticides to rodents; Bird baths; Bird baths not being structures; Bird cages; Bird cages for domestic birds; Bird feeders; Bird feeders for feeding birds in the wild; Bird feeders for feeding caged birds; Bird feeders in the nature of containers; Bird feeding tables; Bird repellent devices, not of metal; Birdcages; Cages for carrying pets; Cages for household pets; Cages for pets; Cages of metal for domestic use; Cat litter boxes; Cat litter pans; Cattle troughs; Bathtub brushes; Automobile wheel cleaning brushes; Billiard table brushes; Blacking brushes; Boot brushes; Brooms; Brooms for cleaning purposes; Brushes adapted for cleaning decanters; Brushes adapted to receive a cleaning agent; Brushes connectable to water hoses; Brushes (Dishwashing -); Brushes for basting meat; Brushes for billiard tables; Brushes for cleaning bicycle components; Brushes for cleaning cars; Brushes for cleaning footwear; Brushes for cleaning golf clubs; Brushes for

cleaning musical instruments; Brushes for cleaning tanks and containers; Brushes for connection to garden hose; Brushes for footwear; Brushes for grooming golf putting greens; Brushes for grooming horses; Brushes for grooming pet animals; Brushes for household purposes; Brushes for household use; Brushes for parquet floors; Brushes for pets; Brushes for pipes; Brushes for use on tree bark; Brushes for washing up; Brushes with detergent containers; Cake brushes; Carpet-cleaning brushes; Bobeches; Candelabra [candlesticks]; Candelabras; Candle drip rings; Candle extinguishers; Candle extinguishers, not of precious metal; Candle extinguishers of precious metal; Candle holders; Candle holders not of precious metal; Candle holders of precious metal; Candle holders of wrought iron; Candle jars [holders]; Candle rings; Candle rings, not of precious metal; Candle rings of precious metal; Candle snuffers; Candle snuffers, not of precious metal; Candle sticks; Candle warmers, electric and non-electric; Candlesticks; Candlesticks of glass; Candlesticks of precious metal; Candlesticks with wind protection; Hand tools for the application of cosmetics; Holders for cosmetics; Cosmetics applicators; Cosmetics brushes; Racks for cosmetics; Cases adapted for cosmetic utensils; Appliances for removing make-up, electric; Appliances for removing make-up, non-electric; Applicator sticks for applying makeup; Applicator sticks for applying make-up; Applicators for applying eye make-up; Applicators for cosmetics; Boot jacks; Boot removers; Boot stretchers; Boot stretchers of wood; Boot trees; Boot trees [stretchers]; Bootjacks; Back scratchers; Bathroom basins [receptacles]; Buckets for industrial use; Carboys; Apothecary jars; Bathroom glass holder; Bathroom pails; Perfume bottles; Perfume bottles sold empty; Cases adapted for toilet utensils; Cases for toiletry articles; Caddies for holding hair accessories for household and domestic use; Brush holders; Boxes for dispensing paper towels; Boxes of metal, for dispensing paper towels; Brushes for cleaning medical instruments; Boxes for holding artificial teeth; Boxes (Soap -).

COSTS

134. The Applicant has enjoyed the greater level of success, the Opposition having failed in respect of roughly 75% of the Applicant's specification. I award the

Applicant the sum of £150 as a contribution towards its costs, calculated as follows³⁸:

Consideration of the Opposition and preparation of Defence and Counterstatement	£200
Less 25% to take account of the Opponent's partial success	-£50
Total:	£150

135. I therefore order Fridababy, LLC to pay to Farid Feyadi the sum of £150. 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 20th day of January 2023

Mx N. R. Morris

For the Registrar,

the Comptroller-General

³⁸ Based upon the scale published in Tribunal Practice Notice 2/2016.