

BL O/0170/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3650831

BY Ugo Bensoussan

TO REGISTER THE TRADE MARK:

LOULOU STUDIO

IN CLASSES 18, 25 & 35

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 428104

BY LULU'S FASHION LOUNGE, LLC

Background and pleadings

1. On 3 June 2021, Ugo Bensoussan (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. In accordance with Article 59 of the Withdrawal Agreement between the UK and the European Union, by filing an application for the EU mark in the UK within nine months of the end of the transition period, the applicant is entitled to rely on the priority date of the EU mark in UK proceedings. Therefore, the date of the application in these proceedings is considered to be 5 April 2019. The application was published for opposition purposes on 10 September 2021. Registration is sought for the following goods and services:

Class 18: Leather and imitations of leather; Handbags; Travelling bags; Beggar's bags; Backpacks; Sport bags; Beach bags; Nappy bags; Document cases of leather; Briefbags; Wallets; Card wallets [leatherware]; Banknote holders; Coin purses, not of precious metal; Travel cases; Satchels; Trunks [luggage]; Valises; Suitcases; Luggage; Luggage tags [leatherware]; Key cases [leatherware]; leather driver's licence cases; Business card cases; Toiletry bags; Cosmetic purses; Vanity cases (not fitted); Garment and shoe bags for travel; Hatboxes of leather or imitation leather; Umbrellas; Parasols; Walking sticks; Collars and covers for animals; carrying-bags for animals; Net shopping bags and shopping bags; Bags or sachets (envelopes, pouches) of leather, for packaging; Whips, harness and saddlery; Leather leashes; Purses; Bumbags.

Class 25: Clothing; Clothing made from leather or imitation leather; Underwear; Lingerie; Socks; Stockings; Tights; Leg warmers; Swimming costumes; Trunks; Beach wraps; Robes; Pyjamas; Dressing gowns; Nighties; Ties, bow ties; Scarves; Sashes for wear; Stoles; Shawls; Headbands [clothing]; Belts [clothing]; Suspenders; Gloves [clothing]; Mittens; Headgear; Visors [headwear]; Ear muffs [clothing]; Footwear [excluding orthopedic footwear]; Beach shoes, skiing or sports shoes; Slippers; Footwear soles; Heelpieces for footwear; Furs [clothing]; Hosiery.

Class 35: Advertising, in particular publicity columns preparation, direct mail advertising; Sales promotion for others; Publication of publicity texts; On-line

advertising on a computer network; Organization of exhibitions for commercial or advertising purposes; Presentation of goods on communication media, for retail purposes; Shop window dressing; Demonstration of goods; Consumers (Commercial information and advice for -) [consumer advice shop]; Retail services and online sales connected with leather and imitations of leather, Handbags, Bags for campers, Messenger bags, Back packs, Bags for sports, Beach bags, Nappy changing bags, briefcases made of leather; Retail services and online sales connected with briefcases, Wallets, card holders, billfolds, Purses, not of precious metal, Travel accessories (leather goods); Retail services and online sales connected with school satchels, Trunks, Suit cases, Valises, Luggage, Luggage tags (leatherware), key cases [leather goods], Cases for driving licenses made of leather, Business card cases, Leather cases for cheque books; Retail services and online sales connected with cases of leather, tie cases, Toilet bags, makeup bags, Vanity cases (not fitted), Garment and shoe bags for travel; Retail services and online sales connected with hat boxes of leather or imitations of leather, Umbrellas, Parasols, Walking sticks, Collars and covers for animals, Carrying bags for animals; Retail services and online sales connected with net bags for shopping and shopping bags, Bags or sachets (envelopes, pouches) of leather, for packaging, Whips, harness and saddlery, Leads, Exchanges, Bumbags; Retail and online sales connected with clothing, Underwear, Socks, Stockings, Tights, Leotards, Swimwear, Bathing shorts, Pareu, Bath robes, Pyjamas, Dressing gowns; Retail services and online sales connected with nighties, Neckties, Bow ties, Scarfs, Scarves, stolas, Shawls, Headbands (clothing); Retail services and online sales connected with belts (clothing), suspenders, Gloves for clothing, fingerless gloves, headpieces, Visors for heads, ear muffs; Retail services and online sales connected with footwear (except orthopaedic footwear), Slippers, soles for footwear; Retail services and online sales connected with heelpieces for footwear, Furs (clothing), Hosiery.

2. The application was opposed by Lulu's Fashion Lounge, LLC ("the opponent") on 10 November 2021. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act") against all of the applicant's goods and services.

3. The opponent relies on the following trade marks:

UK801230611

LULU'S

Filing date: 17 September 2014

Registration date: 6 November 2015

UK801233770

The logo for Lululū's, featuring the brand name in a black, cursive script. The letter 'u' in 'Lululū's' has a small five-pointed star above it.

Filing date: 6 October 2014

Registration date: 8 December 2015

UK801330811

The logo for Lulus, featuring the brand name in a black, cursive script. The word 'Lulus' is written in a fluid, handwritten style.

Filing date: 29 September 2016

Registration date: 18 July 2017

All of the above marks relying upon the following goods and services:

Class 25: Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers,

jumpsuits, lingerie, bodysuits; headwear, namely, hats; footwear, namely, shoes, boots, flip flops, sandals.

Class 35: Computerized on-line ordering featuring general merchandise and general consumer goods; computerized on-line ordering services in the field of clothing, shoes, jewelry and accessories; computerized on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories.

4. The opponent claims that the marks visually share the letters 'L' 'U' 'L' 'U' 'S'. It argues 'STUDIO' has limited distinctive character and so does not serve to distinguish the applicant mark from the opponent's marks. It further asserts that the phonetic similarities are high. The opponent furthers that the applicant's goods and services are identical or at the very least complementary to their own.

5. The applicant filed a counterstatement denying the claims made however, it does admit some identity/similarity between the class 25 goods.

6. The applicant is represented by Lewis Silkin LLP and the opponent is represented by Mewburn Ellis LLP.

7. The applicant filed evidence. Neither party requested a hearing but both parties provided submissions in lieu. This decision is therefore taken following careful consideration of the papers.

8. 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 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.

Evidence

9. The opponent's evidence consists of a witness statement by Helene Whelbourn, who is the applicant's representative, together with five accompanying exhibits. The main purpose of the evidence is to show other marks on the register that contain the word 'LULU' in classes 18, 25 and 35.

10. I have read and considered all of the evidence and will refer to the relevant parts at the appropriate points in the decision.

Decision

Section 5(2)(b)

11. Section 5(2)(b) reads as follows:

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

(a)...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

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

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

...

In these proceedings, the opponent is relying upon the trade mark shown in paragraph 2, above, which qualifies as an earlier trade mark under the above provisions. As this trade mark had not completed its registration process more than 5 years before the filing date of the application in suit, it is not subject to proof of use, as per section 6A of the Act. The opponent can, as a consequence, rely upon all of the goods it has identified.

Case law

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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.

Comparison of Goods and Services

14. Within the Form TM8 and counterstatement, the applicant admits that its class 25 goods are similar to the opponent's class 25 goods. As the applicant did not specify what degree of similarity it considers exists between the parties' respective goods, I must still undertake a comparison in order to identify the degree of similarity between them.

15. 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 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.”

16. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

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

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

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

18. In *Gérard Meric v OHIM* ('Meric'), Case T-133/05, the General Court ("the GC") stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut 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".

19. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade*

Mark (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

20. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

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

Opponent Goods & Services	Applicant Goods & Services
	Class 18: Leather and imitations of leather; Handbags; Travelling bags; Beggar's bags; Backpacks; Sport bags; Beach bags; Nappy bags; Document cases of leather; Briefbags; Wallets; Card wallets [leatherware]; Banknote holders; Coin purses, not of precious metal; Travel cases; Satchels; Trunks [luggage]; Valises; Suitcases; Luggage; Luggage tags [leatherware]; Key cases [leatherware]; leather driver's licence cases; Business card cases; Toiletry bags; Cosmetic purses; Vanity cases (not fitted); Garment and shoe bags for travel; Hatboxes of leather or imitation leather; Umbrellas; Parasols; Walking sticks; Collars and covers for animals; carrying-bags for animals; Net shopping bags and shopping bags; Bags or sachets (envelopes, pouches) of leather, for packaging; Whips, harness and

	saddlery; Leather leashes; Purses; Bumbags.
Class 25: Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits; headwear, namely, hats; footwear, namely, shoes, boots, flip flops, sandals.	Class 25: Clothing; Clothing made from leather or imitation leather; Underwear; Lingerie; Socks; Stockings; Tights; Leg warmers; Swimming costumes; Trunks; Beach wraps; Robes; Pyjamas; Dressing gowns; Nighties; Ties, bow ties; Scarves; Sashes for wear; Stoles; Shawls; Headbands [clothing]; Belts [clothing]; Suspenders; Gloves [clothing]; Mittens; Headgear; Visors [headwear]; Ear muffs [clothing]; Footwear [excluding orthopedic footwear]; Beach shoes, skiing or sports shoes; Slippers; Footwear soles; Heelpieces for footwear; Furs [clothing]; Hosiery.
Class 35: Computerized on-line ordering featuring general merchandise and general consumer goods; computerized on-line ordering services in the field of clothing, shoes, jewelry and accessories; computerized on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories.	Class 35: Advertising, in particular publicity columns preparation, direct mail advertising; Sales promotion for others; Publication of publicity texts; On-line advertising on a computer network; Organization of exhibitions for commercial or advertising purposes; Presentation of goods on communication media, for retail purposes; Shop window dressing; Demonstration of goods; Consumers (Commercial information and advice for -) [consumer advice shop]; Retail services and online sales connected with leather and imitations of leather, Handbags, Bags for campers, Messenger bags, Back packs, Bags for

	<p>sports, Beach bags, Nappy changing bags, briefcases made of leather; Retail services and online sales connected with briefcases, Wallets, card holders, billfolds, Purses, not of precious metal, Travel accessories (leather goods); Retail services and online sales connected with school satchels, Trunks, Suit cases, Valises, Luggage, Luggage tags (leatherware), key cases [leather goods], Cases for driving licenses made of leather, Business card cases, Leather cases for cheque books; Retail services and online sales connected with cases of leather, tie cases, Toilet bags, makeup bags, Vanity cases (not fitted), Garment and shoe bags for travel; Retail services and online sales connected with hat boxes of leather or imitations of leather, Umbrellas, Parasols, Walking sticks, Collars and covers for animals, Carrying bags for animals; Retail services and online sales connected with net bags for shopping and shopping bags, Bags or sachets (envelopes, pouches) of leather, for packaging, Whips, harness and saddlery, Leads, Exchanges, Bumbags; Retail and online sales connected with clothing, Underwear, Socks, Stockings, Tights, Leotards, Swimwear, Bathing shorts, Pareu, Bath robes, Pyjamas, Dressing gowns; Retail services and online sales connected with nighties,</p>
--	---

	Neckties, Bow ties, Scarfs, Scarves, stolas, Shawls, Headbands (clothing); Retail services and online sales connected with belts (clothing), suspenders, Gloves for clothing, fingerless gloves, headpieces, Visors for heads, ear muffs; Retail services and online sales connected with footwear (except orthopaedic footwear), Slippers, soles for footwear; Retail services and online sales connected with heelpieces for footwear, Furs (clothing), Hosiery.
--	--

The applicant's leather and imitations of leather; Handbags; Wallets; Card wallets [leatherware]; Purses

21. In *El Corte Ingles SA v OHIM*, Case T-443/05 the GC found that *Clothing, footwear and headgear* in Class 25 were similar to the clothing accessories included in *Leather and imitations of leather, and goods made of those materials and not included in other classes*. I note that in a later case, *Asos plc v OHIM*, Case T-647/11, the GC found that, for example, sports bags and briefcases could not be considered clothing accessories and were not similar to class 25 goods. The principle to be applied was summarised in *Gitana SA v OHIM*, Case T-569/11:

“Moreover, in respect of the relationship between the ‘goods in leather and imitations of leather’ in Class 18 covered by the trade mark sought and the goods in Class 25 covered by the earlier mark, it is apparent also from settled case-law that the ‘goods in leather and imitations of leather’ include clothing accessories such as ‘bags or wallets’ made from that raw material and which, as such, contribute, with clothing and other clothing goods, to the external image (‘look’) of the consumer concerned, that is to say coordination of its various components at the design stage or when they are purchased. Furthermore, the fact that those goods are often sold in the same specialist

sales outlets is likely to facilitate the perception by the relevant consumer of the close connections between them and support the impression that the same undertaking is responsible for the production of those goods. It follows that some consumers may perceive a close connection between clothing, footwear and headgear in Class 25 and certain 'goods made of these materials [leather and imitations of leather] and not included in other classes' in Class 18 which are clothing accessories. Consequently, clothing, shoes and headgear in Class 25 bear more than a slight degree of similarity to a category of 'goods made of these materials [leather and imitations of leather] and not included in other classes' in Class 18 consisting of clothing accessories made of those materials (see, to that effect, *PiraÑAM diseño original Juan Bolaños*, paragraph 42 above, paragraphs 49 to 51; *exē*, paragraph 42 above, paragraph 32; and *GIORDANO*, paragraph 42 above, paragraphs 25 to 27)."¹

22. Nevertheless, the underlying principle is the same in that the above goods from class 18 are similar to 'clothing' to the extent that they may combine to form a 'coordinated look'. The opponent's specification in class 25 includes 'clothing, namely dresses etc'. Bearing in mind the above case law, I find that they are similar to the applicant's 'leather and imitations of leather; Handbags; Wallets; Card wallets [leatherware]; Purses' to a medium degree.

Travelling bags; Beggar's bags; Backpacks; Sport bags; Beach bags; Nappy bags; Document cases of leather; Briefbags; Banknote holders; Coin purses, not of precious metal; Travel cases; Satchels; Trunks [luggage]; Valises; Suitcases; Luggage; Luggage tags [leatherware]; Key cases [leatherware]; leather driver's licence cases; Business card cases; Toiletry bags; Cosmetic purses; Vanity cases (not fitted); Garment and shoe bags for travel; Hatboxes of leather or imitation leather; Net shopping bags and shopping bags; Bags or sachets (envelopes, pouches) of leather, for packaging; Bumbags

23. As can be seen from the above caselaw, goods such as backpacks and travel bags are not considered clothing accessories and therefore are not found to be similar

¹ Paragraph 45

to class 25 clothing goods. I believe this applies to all of the above goods and therefore consider these goods to be dissimilar to the opponent's specification.

Umbrellas; Parasols; Walking sticks

24. I consider the above goods do not overlap in nature or use with the opponent's goods and services. There is no overlap in user or trade channels other than they might be sold within the proximity of clothing items. I do not believe there is any competition or complementarity. I therefore find these goods to be dissimilar to the opponent's specification.

Collars and covers for animals; carrying-bags for animals; Whips, harness and saddlery; Leather leashes

25. The above goods from the applicant's specification are for use on and with animals whereas the opponent's class 25 goods are for use on humans. They therefore differ in use and users. Although the base materials may be similar, the overall nature differs. The trade channels will also differ as one will be available through places related to pets or animal and clothing will not. They are not complementary, nor are they in competition. I therefore find them to be dissimilar.

26. The following terms are found identically within both specifications: Lingerie; socks; tights.

Clothing

27. I consider that the above goods are a wider category which incorporates the opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' and therefore find them to be identical under the *Meric* principles.

Clothing made from leather or imitation leather

28. I find that the above goods could be included within the opponent's 'Clothing, namely jackets' and therefore find them to be identical under the *Meric* principles.

Underwear

29. The above goods are a wider category which incorporates the opponent's 'Clothing, namely lingerie' and therefore find them to be identical under the *Meric* principles.

Stockings

30. I consider that the nature and use of the applicant's 'stockings' will overlap with the opponent's 'clothing, namely tights', the users are likely to be the same, the uses will be the same, being worn on the legs for warmth or appearance. There may be an overlap in trade channels and the goods will be in competition with each other, that is the consumer will likely choose between the two. I therefore find them to be highly similar.

Swimming costumes; Trunks

31. I consider that the above goods fall within the wider category of the opponent's 'Clothing, namely swimwear' and therefore find them to be identical under the *Meric* principles.

Leg warmers

32. For these goods, I consider there to be an overlap in use and nature with the opponents 'clothing namely socks' as both are intended to be worn on or around the feet and ankles and will likely be made of similar materials. There will likely be an overlap in trade channels and user. They also share the purpose of keeping legs/feet warm and covered. I therefore find them to be similar to a high degree.

Beach wraps

33. I find that there will likely be an overlap in user with the opponent's 'swimwear' as they could both be worn for people on holidays/beaches. Both goods are worn on the body so the method of use will be the same. The goods will likely be selected by the same users. The physical nature of the goods will differ, but they may be offered through the same trade channels and are likely to be found in close proximity within the same retail establishments. They are not in competition with each other nor are they complementary. I therefore find these goods to be similar to at least a medium (but not the highest) degree.

Pyjamas; Dressing gowns; Nighties; Robes

34. I consider that 'lingerie' from the opponent's specification means 'women's underwear and nightclothes'.² Therefore, this would be a wider category incorporating the above goods from the applicant's specification and therefore, they are identical under the *Merit* principles.

Ties, bow ties

35. I consider the above goods from the applicant's specification to be wearable accessories. They will be used for similar purposes to the opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' in that they are used for their aesthetic function in clothing a person. The goods are likely to be selected by the same users and there will be some coincidence in physical nature. The respective goods often occupy the same channels of trade and are available in relatively close proximity within the same retail establishments. I do not believe them to be strictly complementary nor in competition. I therefore find them to be similar to a high degree.

² <https://www.collinsdictionary.com/dictionary/english/lingerie>

Scarves; Shawls; Furs [clothing]

36. These goods from the applicant's specification can be used for decoration purposes but can also have practical applications, such as keeping a person warm. The opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' are worn to keep the body warm and covered in line with societal norms, therefore there is some overlap in purpose. The applicant's above goods are usually worn around the neck or shoulders on top of clothing items. Their nature and use therefore slightly differ although some of the materials may overlap. There will be an overlap in user and the average consumer would expect to see the items within close proximity in the same retail shops. I do not believe them to be complementary nor in competition and I therefore find them to be similar to no more than a medium degree.

Belts [clothing]; Suspenders

37. The above goods can be use for holding up trousers but also can have a decorative nature. The opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' are worn to keep the body warm and covered in line with societal norms. I also accept that there they may have decorative purposes as well and so find that there is a slight overlap in purpose. Both sets of goods are worn on the body so the method of use will be the same. The goods will likely be selected by the same users. The physical nature of the goods will differ but they may be offered through the same trade channels and are likely to be found in close proximity within the same retail establishments. The goods are not competitive nor complementary. I therefore find these goods similar to no more than a medium degree.

Gloves [clothing]; Mittens; Ear muffs [clothing]

38. I believe that 'Gloves [clothing]; Mittens; Ear muffs [clothing]' from the applicant's specification are usually worn on parts of the body that is not generally covered by the opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants,

jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' i.e. the hands and ears. Therefore, the method of use and nature does differ slightly. However, their purpose, keeping the person warm does overlap. There could be an overlap in user and trade channels as they could be found within the same retail spaces. I do not believe they would be in competition nor complementary. I therefore find them to be similar to no more than a medium degree.

Sashes for wear; Stoles

39. The above goods are mainly for decoration purposes but can also have practical applications, such as keeping a person warm. The opponent's 'Clothing, namely dresses, tops, sweaters, vests, jackets, skirts, pants, jeans, shorts, leggings, tights, socks, overalls, swimwear, rompers, jumpsuits, lingerie, bodysuits' are worn to keep the body warm and covered in line with societal norms. I also accept that there they may have decorative purposes as well and so find that there is a slight overlap in purpose. Both sets of goods are worn on the body so the method of use will be the same. The goods will likely be selected by the same users. The physical nature of the goods will differ but they may be offered through the same trade channels and are likely to be found in close proximity within the same retail establishments. The goods are not competitive nor complementary. I therefore find these goods similar to no more than a medium degree.

Headbands [clothing]; Visors [headwear]

40. I believe that the above goods have both decorative and practical applications- either keeping hair back or keeping the sun off the face. The opponent's 'headwear, namely hats' could also have decorative applications together with keeping a person's head warm or hair in place. Therefore, there is an overlap in purpose between the goods. All of these goods are worn on the head and so the method of use is the same and they could indeed be picked by the same users. The goods are likely to be found in similar areas within stores and through the same trade channels. There is a chance there is some overlap in nature, in particular with visors and hats. However, any overlap will be small and for headbands they will differ. The goods are not competitive

nor complementary. I therefore find these goods similar to no more than a medium degree.

Hosiery

41. I consider that the above goods are a wider category which incorporates the opponent's 'Clothing, namely tights' and therefore find them to be identical under the *Meric* principles.

Headgear

42. I find that the above goods are a wider category which incorporates the opponent's 'headwear, namely, hats' and therefore find them to be identical under the *Meric* principles.

Footwear [excluding orthopedic footwear]

43. I consider that the above goods are a wider category which incorporates the opponent's 'footwear, namely, shoes, boots, flip flops, sandals' and therefore find them to be identical under the *Meric* principles.

Beach shoes, skiing or sports shoes; slippers

44. I consider that the above goods fall within the wider category of the opponent's 'footwear namely shoes' and therefore find them to be identical under the *Meric* principles.

Footwear soles; Heelpieces for footwear

45. In *Les Éditions Albert René v OHIM*, Case T-336/03, the GC 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.”

46. Therefore, even though the opponents have ‘footwear, namely shoes, boots, flip flops, sandals’ within their specification, the applicant’s goods would be a part of component of them. Therefore, I consider their purpose, nature, use and users to all differ. They may share trade channels further up in the production process but not on to the end user. I therefore find these goods to be dissimilar.

Advertising, in particular publicity columns preparation, direct mail advertising; Publication of publicity texts; Organization of exhibitions for commercial or advertising purposes; Shop window dressing; Consumers (Commercial information and advice for -) [consumer advice shop]; On-line advertising on a computer network; Sales promotion for others

47. I accept that there might be some overlap of end users of some of these services with the opponent’s class 35 services as some of the services will be directed at the general public who will likely be the purchasers of the opponent’s goods. However, this on its own is not enough to find similarity between the goods and services. The use, method of use and nature of the goods and services clearly differ. Nor is there any overlap in trade channel. The above services in class 35 would be provided by specialist businesses to customers (business users or individuals) looking to obtain those services. I do not consider them to be complementary nor in competition. Consequently, I do not consider there to be any similarity between the goods and services.

Demonstration of goods

48. I believe that the opponent’s ‘on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories’ will be focused on presentation and selection of goods which have been displayed on a shelf or rack whereas the above applicant’s service will be more focused on showing how an item works or is worn and therefore the nature of these services differs. The overarching purpose for both is to entice sales of goods and therefore there is a slight

overlap here and this would also lead to a slight overlap of users. I do not believe these services are complementary nor in competition and I therefore find them to be similar to a low degree.

Presentation of goods on communication media, for retail purposes

49. I consider there to be an overlap in use and user of the above service with the opponent's 'on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories' as presenting goods would likely form part of a retail service in order to show off the goods that are for sale. The overarching purpose is to sell the goods to the consumer. There might be a difference in nature given they are not retail services themselves but are rather a way of displaying the goods. I do not consider them to be complementary nor in competition. I therefore find these services to be similar to a medium degree.

Retail and online sales connected with clothing, Underwear, Socks, Stockings, Tights, Leotards, Swimwear, Bathing shorts, Pareu, Bath robes, Pyjamas, Dressing gowns; Retail services and online sales connected with nighties, Neckties, Bow ties, Scarfs, Scarves, stolas, Shawls, Headbands (clothing); Retail services and online sales connected with belts (clothing), suspenders, Gloves for clothing, fingerless gloves, headpieces, Visors for heads, ear muffs; Retail services and online sales connected with footwear (except orthopaedic footwear), Slippers, soles for footwear; Retail services and online sales connected with heelpieces for footwear, Furs (clothing), Hosiery.

50. I find that the above services overlap in use and user with the opponent's 'on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories' as they all concern retail (whether that be on line or in store) of clothing and accessories. The purpose is identical and there will be an overlap in trade channels. The nature differs where one offers in store retail and the other does not. They are not complementary, but it could be argued that there is competition between the retail that is online and the retail that is in store- a person might choose between them depending on stock levels, prices, and delivery. I therefore find these services to be similar to a high degree.

Retail services and online sales connected with leather and imitations of leather, Handbags, Bags for campers, Messenger bags, Back packs, Bags for sports, Beach bags, Nappy changing bags, briefcases made of leather; Retail services and online sales connected with briefcases, Wallets, card holders, billfolds, Purses, not of precious metal, Travel accessories (leather goods); Retail services and online sales connected with school satchels, Trunks, Suit cases, Valises, Luggage, Luggage tags (leatherware), key cases [leather goods], Cases for driving licenses made of leather, Business card cases, Leather cases for cheque books; Retail services and online sales connected with cases of leather, tie cases, Toilet bags, makeup bags, Vanity cases (not fitted), Garment and shoe bags for travel; Retail services and online sales connected with hat boxes of leather or imitations of leather, Umbrellas, Parasols, Walking sticks, Collars and covers for animals, Carrying bags for animals; Retail services and online sales connected with net bags for shopping and shopping bags, Bags or sachets (envelopes, pouches) of leather, for packaging, Whips, harness and saddlery, Leads, Exchanges, Bumbags

51. As above, these services will overlap in use and user with the opponent's 'on-line retail store services in the field of clothing, shoes, jewelry and clothing accessories, shoe accessories and jewelry accessories' as they all concern retail however, the goods being retailed differ. The purpose is still similar although the consumers themselves might be looking for different items, but it is possible that one undertaking will sell/retail all different types of goods. Again, the nature differs where one offers in store retail and the other does not and it could be in competition. I therefore find these services to be similar to a medium degree.

52. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to

be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

53. I have found no similarity for the applicant’s following goods and services and therefore the opposition fails in relation to them:

Class 18: Travelling bags; Beggar's bags; Backpacks; Sport bags; Beach bags; Nappy bags; Document cases of leather; Briefbags; Banknote holders; Coin purses, not of precious metal; Travel cases; Satchels; Trunks [luggage]; Valises; Suitcases; Luggage; Luggage tags [leatherware]; Key cases [leatherware]; leather driver's licence cases; Business card cases; Toiletry bags; Cosmetic purses; Vanity cases (not fitted); Garment and shoe bags for travel; Hatboxes of leather or imitation leather; Umbrellas; Parasols; Walking sticks; Collars and covers for animals; carrying-bags for animals; Net shopping bags and shopping bags; Bags or sachets (envelopes, pouches) of leather, for packaging; Whips, harness and saddlery; Leather leashes; Bumbags.

Class 25: Footwear soles; Heelpieces for footwear

Class 35: Advertising, in particular publicity columns preparation, direct mail advertising; Publication of publicity texts; Organization of exhibitions for commercial or advertising purposes; Shop window dressing; Consumers (Commercial information and advice for -) [consumer advice shop]; Online advertising on a computer network; Sales promotion for others

54. The opposition will continue in respect of the applicant’s:

Class 18: Leather and imitations of leather; Handbags; Wallets; Card wallets [leatherware]; Purses.

Class 25: Clothing; Clothing made from leather or imitation leather; Underwear; Lingerie; Socks; Stockings; Tights; Leg warmers; Swimming costumes; Trunks; Beach wraps; Robes; Pyjamas; Dressing gowns; Nighties; Ties, bow ties; Scarves; Sashes for wear; Stoles; Shawls; Headbands [clothing]; Belts

[clothing]; Suspenders; Gloves [clothing]; Mittens; Headgear; Visors [headwear]; Ear muffs [clothing]; Footwear [excluding orthopedic footwear]; Beach shoes, skiing or sports shoes; Slippers; Furs [clothing]; Hosiery.

Class 35: Presentation of goods on communication media, for retail purposes; Demonstration of goods; Retail services and online sales connected with leather and imitations of leather, Handbags, Bags for campers, Messenger bags, Back packs, Bags for sports, Beach bags, Nappy changing bags, briefcases made of leather; Retail services and online sales connected with briefcases, Wallets, card holders, billfolds, Purses, not of precious metal, Travel accessories (leather goods); Retail services and online sales connected with school satchels, Trunks, Suit cases, Valises, Luggage, Luggage tags (leatherware), key cases [leather goods], Cases for driving licenses made of leather, Business card cases, Leather cases for cheque books; Retail services and online sales connected with cases of leather, tie cases, Toilet bags, makeup bags, Vanity cases (not fitted), Garment and shoe bags for travel; Retail services and online sales connected with hat boxes of leather or imitations of leather, Umbrellas, Parasols, Walking sticks, Collars and covers for animals, Carrying bags for animals; Retail services and online sales connected with net bags for shopping and shopping bags, Bags or sachets (envelopes, pouches) of leather, for packaging, Whips, harness and saddlery, Leads, Exchanges, Bumbags; Retail and online sales connected with clothing, Underwear, Socks, Stockings, Tights, Leotards, Swimwear, Bathing shorts, Pareu, Bath robes, Pyjamas, Dressing gowns; Retail services and online sales connected with nighties, Neckties, Bow ties, Scarfs, Scarves, stolas, Shawls, Headbands (clothing); Retail services and online sales connected with belts (clothing), suspenders, Gloves for clothing, fingerless gloves, headpieces, Visors for heads, ear muffs; Retail services and online sales connected with footwear (except orthopaedic footwear), Slippers, soles for footwear; Retail services and online sales connected with heelpieces for footwear, Furs (clothing), Hosiery.

Average consumer and the purchasing act

55. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. 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.

56. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

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

57. The average consumer of the goods in classes of 18 and 25 will predominantly be the general public.

58. The selection of such goods is largely a visual process, as the average consumer will wish to physically handle the goods to ensure the correct size has been selected, whilst simultaneously appraising the overall aesthetic impact. If the consumer is buying online, then I also note they will see the marks on the websites. I do not, however, ignore the potential for the marks to be spoken, for example, by sales assistants in a retail establishment or when making a purchase from a catalogue, over the telephone. However, in the latter circumstances, the consumer will have had an opportunity to view the goods, perhaps electronically via an online catalogue or website, or on paper in the traditional sense of catalogue shopping. Therefore, when considering the aural impact of the marks, the visual impression of these goods will already have played a part in the consumer's mind.

59. Although the prices of individual items will vary greatly, I consider that the average consumer will pay at least a medium degree of attention (but not the highest level) during the purchase of the remaining goods as they will be mindful of factors such as colour, size and fabric etc.

60. For the remaining class 35 services, I believe the average consumer will be the public at large. Retail services are likely to have been chosen by viewing promotional material (either hard copy, on television or online) and high street signage. The choice of all of the services at issue will be largely influenced by visual considerations. There is also the possibility of word-of-mouth recommendations. When selecting the services at issue, the average consumer is likely to consider such things as stock, price of goods offered in comparison to other retailers, delivery method (for online retail) and knowledge of the staff. I therefore believe the average consumer will pay a medium degree of attention during the selection process.

Comparison of the marks

61. 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.”

62. 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.

63. I will focus my comparison initially on the opponent's earlier UK801230611 mark. I will deal with the opponent's other marks later in my decision. The respective trade marks are shown below:

Earlier Mark	Contested Mark
LULU'S	LOULOU STUDIO

64. The earlier mark is a word mark which will, most likely, be seen as a name with an apostrophe and letter 'S'. The overall impression lies in the word itself.

65. The contested mark is also a word mark but made up of two words. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of marks tend to have more visual and aural impact than the ends. 'LOULOU' comes first in the mark and also has more conceptual content – I believe the term 'Studio' is likely to denote a place owned by 'LOULOU'. I therefore find that 'LOULOU' carries more weight in the overall impression.

66. Visually, the earlier mark is comprised of four letters, an apostrophe followed by a further letter. The second mark is two words, containing six letters in each word. Both marks are word marks containing the letters 'L' 'U' 'L' 'U' and 'S' in that order but not necessarily consecutively. The earlier mark includes an apostrophe that is not replicated in the contested mark and the contested mark contains the letters 'O', 'O'

and 'TUDIO' that are not found in the earlier mark. I therefore find the marks to be similar to no more than a medium degree.

67. Next, I will look at the aural comparison between the marks. I consider that the earlier marks will be pronounced /oo/loos. I believe the first word of the contested mark will be pronounced as /oo/oo which is almost identical. However, there is the additional word 'STUDIO' which will be given its ordinary dictionary pronunciation. Given this, I find the marks to be aurally similar to at least a medium (but not the highest) degree.

68. I believe the earlier mark will be viewed as meaning a female forename or nickname. With the apostrophe, it implies something belonging to that female. For the contested mark, again, I believe 'LOULOU' is a female forename or nickname. Studio will be given its ordinary dictionary definition of a workshop or room where a designer works.³ Therefore, the overall concept of the contested mark would be a workshop or room named after LOU LOU or where 'LOULOU' works/designs etc. I therefore find the marks to be conceptually similar to at least a medium (but not the highest) degree.

Distinctive Character of the Earlier Marks

69. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

³ <https://www.collinsdictionary.com/dictionary/english/studio>

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).”

70. The opponent made no claim and put forward no evidence relating to an enhanced level of distinctiveness of their earlier marks.

71. I will consider the applicant’s evidence here. The applicant provided a list of other registered trademarks containing the word ‘LULU’ in Exhibit HMW1. I consider that in *Zero Industry Srl v OHIM*, Case T-400/06, the GC stated that:

“73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word ‘zero’, it should be pointed out that the Opposition Division found, in that regard, that ‘... there are no indications as to how many of such trade marks are effectively used in the market’. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II 4865, paragraph 68, and Case T 29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II 5309, paragraph 71).”

72. The list provided includes marks which include other elements in addition to the term LULU. It is not clear how extensive the use of these marks are as I have only

been provided with four screenshots. Therefore, the list itself does not show me that the distinctive character should be diminished. The four exhibits- HMW2 through to HMW5 which show printouts from webpages showing the marks 'LULU GUINNESS', 'LULU TOUT', HONEY LULU' and 'LULU & M'. This evidence is undated so I cannot say when these marks were in use, nor do four examples of some of the goods and services in question make compelling reasoning for finding a lessening in distinctive character. I will therefore consider this no further.

73. The earlier mark comprises of one word: 'LULU'S' which may be perceived to be a female forename or nickname. The mark is not descriptive of the opponent's goods or services. The words are not invented which would usually provide the highest degree of distinctive character and I, in my experience, consider that use of forenames and surnames is fairly common in relation to clothing and retail of clothing. I would therefore say that the earlier mark has a medium degree of inherent distinctive character.

Likelihood of Confusion

74. There are two types of confusion that I must consider. Firstly, direct confusion i.e., where one mark is mistaken for the other. The second is indirect confusion which is where the consumer appreciates that the marks are different, but the similarities between the marks lead the consumer to believe that the respective goods or services originate from the same or a related source.

75. In *L.A. Sugar Limited v Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later

mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

76. I have come to the conclusions above that the marks at issue are visually similar to no more than a medium degree; aurally and conceptually similar to at least a medium degree (but not the highest) and the average consumer would be paying at least a medium degree of attention (but not the highest). The remaining goods and services at issue have been found to be between identical and similar to a low degree. The earlier mark is inherently distinctive to a medium degree.

77. I found the overall impression of the earlier mark rests in the word itself and that the most distinctive and dominant component of applicant mark is ‘LOULOU’. I do not believe the additional word ‘STUDIO’ is so descriptive or allusive of the goods and services at issue that it will be overlooked by the average consumer and therefore, I believe there would be no direct confusion between the marks.

78. I will now go on to consider the possibility of indirect confusion. Again, I take guidance from Mr Purvis in *L.A. Sugar Limited* where he stated:

“17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(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.).

(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”).

79. These examples are not exhaustive but provide helpful focus as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

“This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.”

80. This type of confusion arises where the average consumer recognises that the marks are different but, because of a common element(s), concludes that the marks emanate from the same or economically linked undertakings. In the present case, I see such confusion arising because the coincidence of the female forename LULU/LOULOU which is phonetically identical but with different spellings would lead an average consumer to believe that ‘LULU’S’ and ‘LOULOU STUDIOS’ are related undertakings, especially as the average consumer does not compare the marks side by side. Imperfect recollection of the marks could easily lead to a misremembering of the spelling of the name.

81. The use of sub-brands and brand extensions is common in the clothing trade. The GC stated, in *Zero Industry Sri v OHIM*, Case T-400/06, at paragraph 81

" ... it is common in the clothing sector for the same mark to be configured in various ways according to the type of product which it designates, and second, it is also common for a single clothing manufacturer to use sub-brands (signs that derive from a principal mark and which share with it a common dominant element) in order to distinguish its various lines from one another."

82. I find that the addition of the word 'STUDIO' will cause average consumers to consider that the mark is a sub-brand or brand extension by the undertaking responsible for 'LULU' due to the imperfect recollection of the spelling of LULU/LOULOU. I therefore consider that indirect confusion is likely to occur.

83. The opponent's remaining earlier marks are registered for the same goods and services as UK801230611, and therefore take the opponent's case no further forward than the finding I have already made. The marks shown in paragraph 2 are stylised words no closer to the contested registration than UK801230611 which has been the subject of my initial comparison and therefore do not provide the opponent with any stronger case.

Conclusion

84. The opposition is successful in relation to the following goods and services:

Class 18: Leather and imitations of leather; Handbags; Wallets; Card wallets [leatherware]; Purses.

Class 25: Clothing; Clothing made from leather or imitation leather; Underwear; Lingerie; Socks; Stockings; Tights; Leg warmers; Swimming costumes; Trunks; Beach wraps; Robes; Pyjamas; Dressing gowns; Nighties; Ties, bow ties; Scarves; Sashes for wear; Stoles; Shawls; Headbands [clothing]; Belts [clothing]; Suspenders; Gloves [clothing]; Mittens; Headgear; Visors [headwear]; Ear muffs [clothing]; Footwear [excluding orthopedic footwear]; Beach shoes, skiing or sports shoes; Slippers; Furs [clothing]; Hosiery.

Class 35: Presentation of goods on communication media, for retail purposes; Demonstration of goods; Retail services and online sales connected with leather and imitations of leather, Handbags, Bags for campers, Messenger bags, Back packs, Bags for sports, Beach bags, Nappy changing bags, briefcases made of leather; Retail services and online sales connected with briefcases, Wallets, card holders, billfolds, Purses, not of precious metal, Travel accessories (leather goods); Retail services and online sales connected with

school satchels, Trunks, Suit cases, Valises, Luggage, Luggage tags (leatherware), key cases [leather goods], Cases for driving licenses made of leather, Business card cases, Leather cases for cheque books; Retail services and online sales connected with cases of leather, tie cases, Toilet bags, makeup bags, Vanity cases (not fitted), Garment and shoe bags for travel; Retail services and online sales connected with hat boxes of leather or imitations of leather, Umbrellas, Parasols, Walking sticks, Collars and covers for animals, Carrying bags for animals; Retail services and online sales connected with net bags for shopping and shopping bags, Bags or sachets (envelopes, pouches) of leather, for packaging, Whips, harness and saddlery, Leads, Exchanges, Bumbags; Retail and online sales connected with clothing, Underwear, Socks, Stockings, Tights, Leotards, Swimwear, Bathing shorts, Pareu, Bath robes, Pyjamas, Dressing gowns; Retail services and online sales connected with nighties, Neckties, Bow ties, Scarfs, Scarves, stolas, Shawls, Headbands (clothing); Retail services and online sales connected with belts (clothing), suspenders, Gloves for clothing, fingerless gloves, headpieces, Visors for heads, ear muffs; Retail services and online sales connected with footwear (except orthopaedic footwear), Slippers, soles for footwear; Retail services and online sales connected with heelpieces for footwear, Furs (clothing), Hosiery.

85. The opposition fails, and registration can continue in respect of the following goods and services:

Class 18: Travelling bags; Beggar's bags; Backpacks; Sport bags; Beach bags; Nappy bags; Document cases of leather; Brief bags; Banknote holders; Coin purses, not of precious metal; Travel cases; Satchels; Trunks [luggage]; Valises; Suitcases; Luggage; Luggage tags [leatherware]; Key cases [leatherware]; leather driver's licence cases; Business card cases; Toiletry bags; Cosmetic purses; Vanity cases (not fitted); Garment and shoe bags for travel; Hatboxes of leather or imitation leather; Umbrellas; Parasols; Walking sticks; Collars and covers for animals; carrying-bags for animals; Net shopping bags and shopping bags; Bags or sachets (envelopes, pouches) of leather, for packaging; Whips, harness and saddlery; Leather leashes; Bumbags.

Class 25: Footwear soles; Heelpieces for footwear

Class 35: Advertising, in particular publicity columns preparation, direct mail advertising; Publication of publicity texts; Organization of exhibitions for commercial or advertising purposes; Shop window dressing; Consumers (Commercial information and advice for -) [consumer advice shop]; Online advertising on a computer network; Sales promotion for others

Costs

86. The guidance for awards of costs are set out in TPN 2/2016.

87. On reviewing the matters at hand, I consider that both parties have had some level of success and some failure. It is my view that on this occasion, the fairest basis to deal with costs is for each party to bear their own in this matter.

88. I therefore make no award of costs in this matter.

Dated this 16th day of February 2023

L Nicholas

For the Registrar