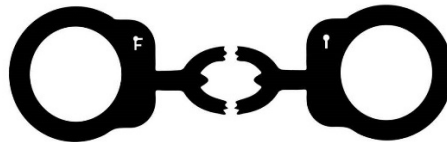


O/937/21

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 3490202 BY
SINITTA BRIGHT
TO REGISTER THE TRADE MARK:**




IN CLASS 25

AND

**OPPOSITION THERETO
UNDER NO. 421289
BY
DENIM MERCHANTS (UK) LIMITED**

BACKGROUND & PLEADINGS

1. **Sinitta Bright** (“the applicant”) applied to register the (figurative) trade mark shown on the front page of this decision in the United Kingdom on 15 May 2020. It was accepted and published in the Trade Marks Journal on 5 June 2020 in respect of the goods shown in Annex I to this decision.
2. **Denim Merchants (UK) Limited** (“the opponent”) opposes the application on the basis of Sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The Section 5(2)(b) and 5(3) grounds are based upon the following two earlier UK registered marks:

Trade Mark no.	02595547 ('547)
Trade Mark	
Goods & Services	Class 25: Clothing, footwear and headgear.
Relevant Dates	Filing date: 23 September 2011
	Date of entry in register: 30 December 2011

Trade Mark no.	02595548 ('548)
Trade Mark	
Goods & Services	Class 25: Clothing, footwear and headgear.
Relevant Dates	Filing date: 23 September 2011
	Date of entry in register: 30 December 2011

3. For the purpose of this opposition, the opponent relies upon all its registered goods in Class 25.
4. Under 5(2)(b) of the Act, the opponent in its notice of opposition claims that the competing marks are highly similar, and the respective goods are

identical and similar. It also contends that the earlier marks enjoy an enhanced degree of distinctiveness resulting from the extensive use of the marks. In this regard, registration of the contested mark should be refused under Section 5(2)(b) of the Act.

5. Under Section 5(3), the opponent claims a reputation in its marks for the goods listed above such that the relevant public will believe the parties' goods are from an economically linked undertaking. The opponent also contends that the use of the applied for mark in relation to the contested goods will be detrimental to, and erode the distinctiveness, of its earlier marks, damage its business, and give an unfair advantage to the applicant.
6. In response, the applicant filed a counterstatement, denying the grounds of opposition under Sections 5(2)(b) and 5(3) of the Act. She made contentions in relation to the differences between the competing marks, emphasising on the 'broken handcuffs' of the contested mark, the different client base, and the common use of handcuff devices for goods in Class 25. I will return to these points later in this decision. Following the Tribunal's letter, dated 21 January, in which the applicant was asked to clarify the extent to which proof of use was requested, the applicant, with her amended counterstatement, requests that the opponent provides proof of use of its earlier mark '547 relied upon.
7. Only the opponent filed evidence in these proceedings. This will be summarised to the extent that I consider necessary. None of the parties filed submissions during the evidence rounds.
8. Only the opponent filed written submissions in lieu of a hearing. Thus, this decision has been taken following a careful consideration of the papers.
9. In these proceedings, the opponent is represented by Novagraaf UK and the applicant is a litigant in person.

10. 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.

RELEVANT DATE/PERIOD

11. An “earlier trade mark” is defined in Section 6(1) of the Act:

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

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

[...]

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

12. As the earlier marks relied upon had been registered for more than five years on the date on which the contested application was filed, Section 6A of the Act applies, which states:

“(1) This Section applies where–

- (a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within Section 6(1)(a), (b) or (ba) in relation to which the conditions set out in Section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this Section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if—

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes—

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Union.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this Section as if it were registered only in respect of those goods or services.”

13. In accordance with Section 6(1) of the Act, the opponent’s trade marks clearly qualify as earlier marks. The relevant period for proof of use of the opponent’s mark is **16 May 2015 to 15 May 2020**. The relevant date for the assessment of likelihood of confusion as per Section 5(2)(b) is the date on which the contested application was filed, namely **15 May 2020**.

EVIDENCE

Opponent’s Evidence

14. The opponent filed a witness statement, dated 29 June 2021, of Mariya Farhan, the Director of the opponent (referring to it as “DML”), who has held this position over the last eight years. Ms Farhan explains:

“In 2010 DML created a British contemporary men’s fashion brand with an anti law and order theme which they call JUDGE & JURY partly inspired by the fact that the premises of DML was at that time located opposite HM Prison Manchester still commonly referred to as 'Strangeways', particularly by locals. JUDGE & JURY is a collection of men’s denim, chinos, graphic t-shirts, casual t-shirts, over shirts,

tops, pullovers, jumpers, jackets and hooded jackets and fleeces, fusing detailed classic designs with an obvious street wear feel.”

- Ms Farhan outlines and provides with her witness statement the registered trade marks in Class 25 under the opponent’s ownership, including those upon which the opponent relies on in these opposition proceedings. She also describes the visual aspects of the earlier marks, which I will not propose to summarise here, and their use in trade. Ms Farhan explains the various ways the earlier marks appear on “a range of clothing items, namely ‘Jeans, T-shirt, Hoodies, Jackets, and knitwear’.” Examples are provided with Exhibit MAF 1 which consists of a selection of undated images that depict the use of the marks on men’s clothing items, namely jeans, T-shirts, hoodies, jumpers, jackets, and cardigans.

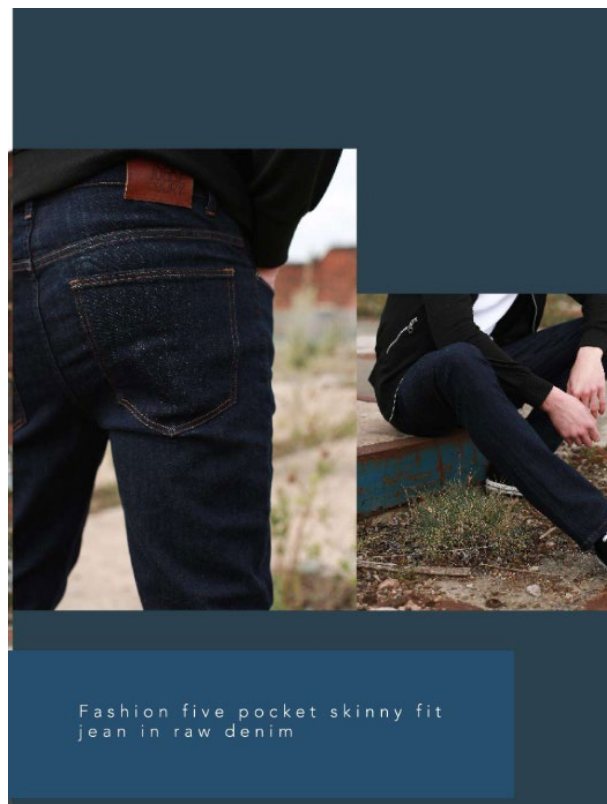


- The witness also provides the following figures in relation to the annual sales concerning the earlier marks:

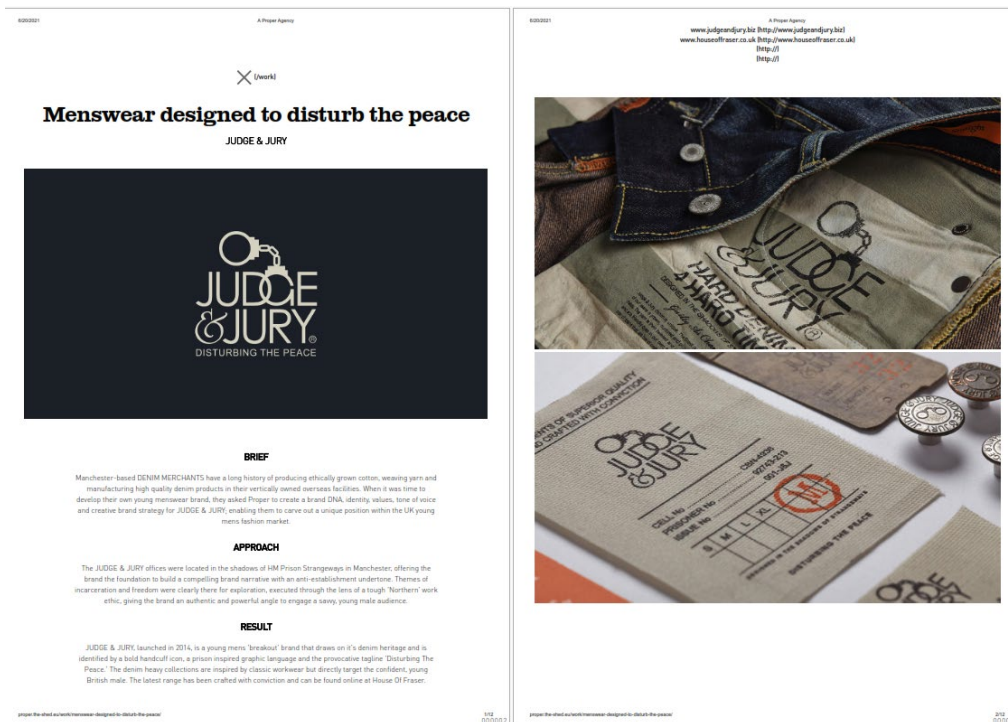
Year	Sales Value (£' s - Pounds Sterling)	Numbers of garments Sold
2015	150,550.00	18,800
2016	202,780.00	24,850
2017	201,950.00	24,550
2018	199,100.00	25,200
2019	186,100.00	22,850
2020	52,800.00	7,200
2021 (t/d)	19,550.00	2,450
TOTALS	1,012,830.00	125,900

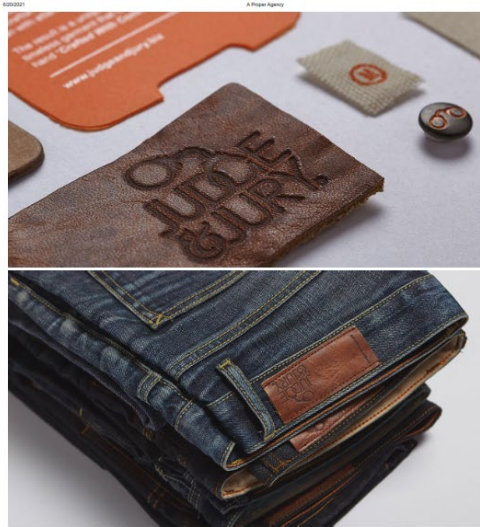
17. In addition to the above figures, a selection of UK invoices between 2015 and 2021 illustrate sales of the relevant goods under the earlier marks in the UK with Exhibit MAF 2. I note that Ms Farhan clarifies in her witness statement that the “abbreviation "JJ" is a reference to the 'JUDGE & JURY' brand, meaning of course sales relating to both [...] of the [earlier] ‘handcuffs marks’.” In particular, the following number of invoices per year are demonstrated: 2 from 2015, 2 from 2016, 2 from 2017, 2 from 2018, 2 from 2019, 2 from 2020, 2 from 2021. The invoices were headed as being issued by the opponent, and they include the description, quantity, unit price, net amount, and VAT of the purchased items. As shown previously in this decision, the relevant period is 16 May 2015 to 15 May 2020. Thus, I will only take into account and delineate the invoices that fall within the relevant period. In this regard, I note that both of the invoices for 2020 post-date the relevant period, namely 1 June 2020 and 31 August 2020. The relevant invoices show entries of the following products under the earlier marks in various quantities: jeans, t-shirts, jackets, hoodies, and joggers. All the relevant invoices, while partially redacted, are UK sales and are addressed to various customers in the UK, namely Haverfordwest, Watford, Swinton, London, Manchester, Middlesex, Burnley, Huddersfield, Wrexham, and Westhoughton.
18. Ms Farhan states that the opponent has spent “an average of £2,300 per annum in promoting the "handcuffs marks"”. Exhibit MAF 3 consists of four marketing publications with the earlier mark ‘548 featuring on the front

cover with the strapline 'Disturbing the Peace' underneath it. I note that the catalogues are between 2018 and 2020 as they are headlined as 'Spring Summer 18', 'J&J 19', 'Collection SS19', 'SS20 – Spring Summer 2020 Collection'. These show the earlier figurative marks used throughout in relation to clothing for men, including t-shirts, jeans, jackets, cardigans, hoodies, shorts, jumpers, and chinos. The catalogues showcase the opponent's goods with a collection of pictures, promotional ads and information about the goods.



19. Ms Farhan outlines that “[d]uring the period from 2013 to 2015/16, DML engaged the services of a couple of design agencies to create a brand identity for 'JUDGE & JURY' (which included the "handcuffs marks") and photo and film campaigns to be used in their digital and print marketing communications, spending several thousands of pounds in the process.” Accordingly, Exhibit MAF 4 contains details of three campaigns, dated with a print date of 20 June 2021, titled ‘Menswear designed to disturb the peace’; ‘Disturbance in Dubai menswear campaign’; and ‘Hard denim 4 hard time menswear campaign’; and one campaign, dated 20 January 2015, titled ‘House of Fraser welcomes Judge & Jury Menswear’. Each of them is based on a different theme containing a ‘BRIEF’, ‘APPROACH’, and ‘RESULT’ followed by a collection of pictures, some featuring closeups of the products with the earlier marks as shown below.





20. Ms Farhan claims that the result of the above endeavour produced a lot of press attention. Exhibit MAF 5 consists of prints from online news articles that fall outside the relevant period, which I will only outline as follows:

- i. the *AVERAGE JOES* blog page, dated 18 December 2012 and titled 'JUDGE & JURY CLOTHING'. The article describes the launching of a collection for Spring / Summer 2013, including pictures of the goods, such as t-shirts, a duffle coat, and jeans.
- ii. the *valentinosdisplays.com* website, 5 August 2013 and titled 'Clothes hangers – Judge & Jury clothing'. The article sponsors the

whitewash clothes hangers bearing the earlier mark providing details about their premium quality, material, and dimensions.

- iii. the *fashionbeans.com* website, dated 14 February 2013 and titled 'Judge & Jury SS13 Collection', covering the release of the Judge & Jury look book for SS13 providing details about the lines and design of the collection.
- iv. the *fashionbeans.com* website, dated 12 September 2013 and titled 'Judge & Jury AW13'. The article describes the range of the collection that is imbued with the theme of "freedom to wear what you want and freedom to think for yourself."
- v. the *urbanblogdotcom1.wordpress.com* website and titled 'Judge & Jury Clothing: AW13'. I note that the content of the article replicates that of the previous article in 'd' with the addition of media imagery.
- vi. the *the-spin-off.com* website, dated 21 August 2013 and titled 'Label to watch: Judge & Jury'. The article focuses on the spring/summer 2014 collection, also providing wholesale prices.
- vii. the *menswearstyle.co.uk* website, dated 8 January 2015 and titled 'DISCOVER JUDGE AND JURY - AN EDGIER AND TOUGHER BRAND FROM MANCHESTER'.

21. That concludes my summary of the evidence filed insofar as I consider it necessary.

DECISION

Proof of Use

22. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114. [...] The CJEU [Court of Justice of the European Union] has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C 416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I 4237, Case C-442/07 *Verein Radetsky-Order v Bundersvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d)

the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus, there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

23. The onus is on the proprietor of the earlier mark to show use. This is in accordance with Section 100 of the Act, which states:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

24. Proven use of a mark which fails to establish that “the commercial exploitation of the marks is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

25. As noted earlier in this decision, the applicant with the amended counterstatement requested that the opponent provides proof of use solely for the earlier mark '547. This means that the '548 mark can be taken into account in these proceedings for its specification as relied upon without consideration of the evidence. In this regard, I will proceed to the assessment of proof of use of the '547 mark in the following sections.

Form of the Mark

26. In Case C-12/12 *Colloseum Holdings AG v Levi Strauss & Co.*, which concerned the use of one mark with, or as part of, another mark, the CJEU found that:

“31. It is true that the ‘use’ through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas ‘genuine use’, within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, ‘use’ within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish ‘use’ within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.”

32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, the ‘use’ of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the

sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)".

27. Where the issue is whether the use of a mark in a different form, rather than with, or as part of, another mark, constitutes genuine use of the mark as registered, the decision of Mr Richard Arnold QC (as he then was), sitting as the Appointed Person, in *Nirvana Trade Mark*, BL O/262/06, is relevant. He said:

"33. [...] The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period. [...]

34. The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter's distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does

not depend upon the average consumer not registering the differences at all."

28. The evidence as shown on the Exhibits, accompanying the opponent's witness statement, demonstrates use of the opponent's earlier mark '547 in the form as registered and, thus, such use can be relied upon. This is evident from the use of the mark on various garments, buttons, tags, labels, look books and campaigns.¹ Whether the use constitutes genuine use, I come on to below.
29. Although the '548 mark is not subject to proof of use for the reasons I have already given, I have considered whether the actual use of the '548 mark in that form in the evidence supports use of the '547 mark, given that it includes handcuffs in its design. For the following reasons, I do not consider that it does. Whilst the figurative aspects of the '548 mark will be seen as handcuffs, the right-hand cuff is integrated into the letter 'G' of the word 'JUDGE' that forms the cuff itself. In this regard, the use of the handcuffs device does not constitute use in conjunction with, or as part of, another mark as per *Colosseum*, and the way in which that integration happens means that the distinctive character of the '547 mark is also being altered when applying the principles outlined in *Nirvana*.

Genuine Use

30. As indicated in the case law cited above, use does not need to be quantitatively significant to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark(s) which can be regarded as "warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark".
31. The relevant period is between 16 May 2015 and 15 May 2020. As shown above, an unchallenged annual breakdown of the turnover figures in the

¹ See Exhibits MAF 1, 3, 4.

UK for the relevant period was provided with the opponent's witness statement, the total of which is in excess of £990,000 (between 2015 and 2020). However, I note that the figures do not differentiate between the earlier marks. The evidence also includes a number of invoices issued within the relevant period for the sale of a variety of clothing to distributors in the UK.²

32. Ms Farhan mentions in her witness statement that the opponent's marketing expenditure amounts to an average of £2,300 per annum, giving evidence of promotional material, such as the catalogues and look-books,³ where the earlier mark '547 is clearly displayed. I find such marketing expenditure to be very low. Further, there is evidence of preparatory materials (mock-ups) for marketing campaigns⁴ and online news articles⁵. However, I note that the former ones are undated, and the latter all pre-date the relevant period.
33. Although the evidence could have been better and more comprehensive in parts, an assessment of genuine use is a global assessment, which requires looking at the evidential picture as a whole and not whether each individual piece of evidence shows use by itself.⁶ Undoubtedly, the UK clothing market is a very significant one, and even though the opponent did not provide any evidence as to the market share it possesses, I am satisfied that this evidence supports that the opponent has operated in a way aimed at real commercial exploitation and has done so for a number of years. I have borne in mind that the evidence portrays that the primary mark used by the opponent is the '548 mark, as opposed to the '547 mark, which I am formally assessing here. However, in my view the evidence of the '547 clearly shows that it is used as a secondary or supporting mark via use on items of, for example, clothing themselves or buttons and tags/labels. Bearing in mind the evidential picture as a whole, including the

² See Exhibit MAF 2.

³ See Exhibit MAF 3.

⁴ See Exhibit MAF 4.

⁵ See Exhibit MAF 5.

⁶ See *New Yorker SHK Jeans GmbH & Co KG v OHIM, T-415/09*.

garments, buttons, tags, labels, look books and campaigns as shown in the relevant Exhibits,⁷ I am satisfied that the evidence supports genuine use of the '547 mark in the UK during the relevant period. As such, the opponent can rely upon the registered mark for the purpose of these proceedings.

Fair specification

34. I must now consider what a fair specification would be for the use shown.
35. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose, the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

36. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

⁷ See Exhibits MAF 1, 3, 4.

iv) In cases of partial revocation, pursuant to Section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("*Asos*") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

37. The goods at issue are "*clothing, footwear, headgear*" in Class 25, and these are the goods for which the opponent made a statement of use.

Neither the opponent nor the applicant has commented upon the specific goods they believe the earlier mark has, or has not, been used, nor what a fair specification should be.

38. Earlier in this decision, I identified the types of goods for which the mark has been used, including t-shirts, jeans, jackets, hoodies. The evidence only shows such products as items of menswear. The goods are all what I would thus characterise as men's outerwear. There is no evidence in relation to "footwear" and "headgear". I consider that the average consumer would describe the use as "men's outerwear". Whilst this is a fairly broad term, the breadth of use justifies this, and it would not be the case that the average consumer would attempt to sub-categorise the goods further. Consequently, I consider a fair specification to be:

Class 25: *men's outerwear.*

Section 5(2)(b)

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

"A trade mark shall not be registered if because-

[...]

(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".

40. The principles, considered in this opposition, stem from the decisions of the European 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 BV* (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of Goods

41. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (CJEU) stated that:

“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 complementary.”

42. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] RPC 281. At [296], he identified the following relevant factors:

- “(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.”

43. The General Court confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

“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 fur 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”.

44. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole

basis for the existence of similarity between goods or services. The General Court clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

“[...] 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.”

45. In its notice of opposition, the opponent claims identity and similarity between the respective goods, a point which is reiterated in the submissions in lieu.
46. The applicant, in her notice of defence, has not denied the identity/similarity of the goods at issue, although in relation to the ‘547 mark, this was before the framing of a fair specification took place.

Earlier Mark ‘548

47. The applicant’s specification is voluminous in nature, and I do not intend to repeat it here. They are, however, all items of clothing, footwear or headgear. The opponent’s goods for earlier mark ‘548 are:

Class 25: Clothing, footwear and headgear.

48. I find that the opponent’s goods are broad terms that will sufficiently encompass the applicant’s goods. Therefore, I find the respective goods in Class 25 to be identical as per *Meric*.

Earlier Mark ‘547

49. Taking into account the fair specification I indicated earlier in relation to mark ‘547, the opponent’s goods in Class 25 are “*men’s outerwear*”. As stated above, I do not intend to repeat the applicant’s specification here.

50. As I have touched on above, all of the items in the applicant specification are items of clothing, footwear and headgear. This means in my view that as everything is in the general field of clothing, as is the opponent “*men’s outerwear*”, there is a degree of similarity between all of the terms. This is on the basis at least that such items are all intended to clothe the body in some shape of form and could potentially be made from similar materials. I fully accept that there will be a range of degrees of similarity from identical (where the terms overlap), highly similar, medium, and goods which might only have a low or even very low degree of similarity.

Average Consumer and the Purchasing Act

51. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J described the average consumer in these terms:

“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.”

52. I bear in mind the decision of the General Court in *New Look Ltd v OHIM* Cases T-117/03 to T-119/03 and T-171/03, (“New Look”), in which it stated that:

“43. It should be noted in this regard that the average consumer's level of attention may vary according to the category of goods or services

in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector.

[...]

50. Generally, in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

53. In relation to the goods, they cover a wide range purchased by members of the general public. Such goods are usually offered for sale in stores, for instance, high street retail outlets, brochures, catalogues, and online. In retail premises, the goods will be displayed on shelves and racks, where they will be viewed and self-selected by consumers. Similarly, for online stores, consumers will select the goods relying on the images displayed on the relevant web pages. Therefore, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment, as advice may be sought from a sales assistant or representative.
54. The goods, at least generally, are purchased fairly frequently. The cost of the goods may vary, but in any case, and irrespective of the cost, the

average consumer may examine the products to ensure that they select the correct type, materials, quality, and aesthetic appearance. In this regard, and whilst there may be slight variations depending on the exact goods, the average consumer is likely to pay an average degree of attention when selecting the goods at issue.



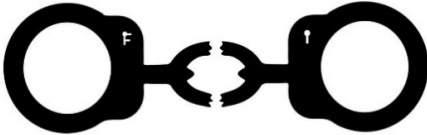
Comparison of Trade Marks

55. 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.”

56. 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.

57. The marks to be compared are:

Opponent's Marks	Applicant's Mark
<p data-bbox="379 300 625 333"><u>Earlier Mark '547</u></p>  <p data-bbox="379 607 625 640"><u>Earlier Mark '548</u></p> 	

Overall Impression

58. The contested mark is a figurative representation of a pair of handcuffs with a broken link/chain. The applicant in her counterstatement claims that the contested mark “contains a distinctive figure within the handcuffs as the lock and key is in the shape of ‘F’ & ‘I’”. I am not convinced that the average consumer will identify these elements as the letters ‘F’ and ‘I’. In contrast, it is more likely that they will be seen as keyholes being part of the figurative representation of the broken handcuffs. In addition, because of their minimal size, I disagree that these elements will be a distinctive feature or play any significant role in the mark. It is established case law that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, as the keyholes at issue.⁸ Whilst the handcuffs are broken, the impact and role the brokenness play in the overall impression might be limited as it will not stand out. Thus, I find that the representation of the handcuffs as a whole will have the greatest weight in the overall impression.

⁸ See Case C-334/05, P *OHIM v Shaker* [2007] ECR I-4529.

59. The overall impression in the earlier figurative mark '547, which consists of a device of pair of handcuffs, lies in the mark as a whole. The earlier figurative mark '548 is a composite mark consisting of the word elements "JUDGE & JURY", and a device representing a pair of handcuffs with the letter 'G' of the word element "JUDGE" forming the second cuff in the pair of handcuffs. I note that the verbal elements are mildly stylised, and the letters 'D' and 'G' are conjoined. Overall, based on their structure, the words "JUDGE & JURY" and the device make an equal contribution to the overall impression.

Visual comparison

Contested mark and earlier mark '547

60. Visually, the key similarity between the marks is that both contain a representation of a pair of handcuffs. However, I note that the link/chain of the handcuffs in the contested mark appears to be broken and in a different orientation as opposed to the earlier mark. Another point of difference is the presence of the keyholes in the contested mark, although this is a small difference. Weighing all the factors and taking into account the overall impressions, I find a high visual similarity between the marks.

Contested mark and earlier mark '548

61. As already outlined in the preceding paragraph, the main visual similarity will be the pair of handcuffs. I note, however, that the earlier mark at issue introduces further visual differences. The earlier mark contains the word elements "JUDGE & JURY", which are not present in the contested mark. Moreover, one end of the handcuffs forms the letter 'G' attached to the word element "JUDGE" of the earlier mark. As noted previously, the orientation of the handcuffs devices is different, and there are no counterparts of the keyholes in the earlier mark. Considering all the factors, I find the respective marks to be visually similar to a low to medium degree.

Aural comparison

62. The opponent in its submissions claims that:

“Despite the fact that the Applicant’s mark does not contain any verbal element, nevertheless the average/relevant consumer, upon seeing the Applicant’s mark, is likely to verbalise it as being the ‘handcuffs’/‘pair of handcuffs’ mark, and consequently we submit that the Applicant’s mark is similar to the Opponent’s earlier mark UK00002595547, and to a degree the Opponent’s earlier trade mark UK00002595548, verbally speaking.”

63. I disagree with this view for the reasons set out below.

Contested mark and earlier mark ‘547

64. The correct approach to conducting an aural comparison of figurative marks was clarified by the General Court in *Dosenbach-Ochsner AG Schuhe und Sport v OHIM*, Case T-424/10, in which it stated:

“46. A figurative mark without word elements cannot, by definition, be pronounced. At the very most, its visual or conceptual content can be described orally. Such a description, however, necessarily coincides with either the visual perception or the conceptual perception of the mark in question. Consequently, it is not necessary to examine separately the phonetic perception of a figurative mark lacking word elements and to compare it with the phonetic perception of other marks.”

65. In light of the above rationale and the competing marks in question, there is no aural assessment to conduct.

Contested mark and earlier mark ‘548

66. The earlier mark ‘548 contains the word elements “JUDGE & JURY”, which the average consumer will pronounce as “JUHJ AND JUUHREE”. As

explained in the preceding paragraph, the figurative elements in both marks will not be verbalised by the average consumer. Considering all the factors, I find that the marks are aurally dissimilar.

Conceptual comparison

67. The opponent in its submissions considers that “the Applicant’s mark bears a high degree of similarity to the Opponent’s earlier trade marks, particularly earlier UK00002595547, invoking as it does in the mind of the average/relevant consumer the same theme or concept of law & order as do the Opponent’s earlier trade marks.” (sic)

Contested mark and earlier mark ‘547

68. In the absence of evidence, I am not convinced that the respective marks will be perceived based on the concept of ‘law and order’. It is my view that the opponent’s claim goes one step further in the conceptualisation process, which requires intellectual analysis or time to reflect on the mark. Instead, I consider the average consumer will attribute immediately and without the need for further reflection the concept of a pair of handcuffs in the respective marks. Taking all of this into account, I consider the marks to be conceptually identical.

Contested mark and earlier mark ‘548

69. The earlier mark ‘548 consists of the word elements “JUDGE & JURY”, which are dictionary and well-known words to the UK average consumer. Together these words convey the concept of authority and justice, as both, a judge and a jury, are vested with the authority to decide over legal matters. The average consumer will readily understand such a concept. It is my view that the figurative representation of the handcuffs in this instance not only retains its meaning, as observed in the previous paragraph, but also reinforces the concept conveyed by the verbal elements.

70. In terms of the contested mark, the same concept will apply here, namely a pair of handcuffs, but I note that there is a conceptual difference due to the absence of verbal counterparts that are present in the earlier mark. Whilst the competing marks will only coincide in the conceptualisation of the common figurative element, namely the pair of handcuffs, the earlier mark unambiguously conveys the additional concept of “JUDGE & JURY”. Considering all the factors and the points of the overall impression, I find there to be a medium degree of similarity between the competing marks on a conceptual level.

Distinctive Character of The Earlier Trade Marks

71. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

72. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
73. As detailed above, the average consumer will conceptualise the representation of the handcuffs as such in the earlier marks. I note that there is no apparent link between the marks and the goods concerned. Indeed, whilst I would not say that the handcuffs are highly distinctive for the goods at issue, this does appear to be a fairly fanciful choice of mark. Even though the applicant puts forward that “the figurative of handcuffs, like the opponents, have been used vastly on the goods replied on in Class 25 by other companies and is widely available on shopping sites on the Internet” (sic), no evidence has been provided to support this contention. I bear in mind that only the common elements between the respective marks should be considered to evaluate the relevant (to the question of confusion) distinctiveness.⁹ In this regard, the verbal elements “JUDGE & JURY” add to the distinctiveness of the second earlier mark ‘548, but I note that there are no counterparts in the contested mark, so this is unlikely to increase the likelihood of confusion. Therefore, I find that the first earlier mark ‘547 is inherently distinctive to a slightly above average degree, whilst the second earlier mark ‘548 will be more distinctive on account of the verbal elements, but the common element is likewise distinctive to slightly above average.

Enhanced Distinctiveness

74. The level of distinctiveness of a mark may be enhanced through use. Enhanced distinctiveness is a measure of how strongly the mark identifies

⁹ See *Kurt Geiger v A-List Corporate Limited*, BL O/075/13.

the goods of the opponent. As mentioned, the inherent distinctiveness of the earlier marks will be slightly above average as to the common figurative element.

75. With its submissions, the opponent claims enhanced distinctiveness “as a result of the Opponent’s use of the earlier trade marks.” Taking into account the evidence, which I have summarised earlier in this decision, I will now consider whether the earlier marks have acquired enhanced distinctive character through use. According to the evidence, I note that the opponent’s sales amount to below £1million in total between 2015 and 2020. Importantly, there is no indication of the market share the opponent possessed during the relevant period. However, I consider this to be a very low market share as the relevant industry in the UK is undoubtedly a significant one. Last, Ms Farhan, in her witness statement, indicates that the opponent has spent on average £2,300 per year in promoting the given marks, which I find to be a fairly low amount of marketing expenditure. Overall, and whilst I have found genuine use for the mark ‘547, I find the evidence insufficient to have enhanced the distinctiveness of the earlier marks from the inherently slightly above average starting point.

Likelihood of Confusion

76. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.¹⁰ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to

¹⁰ See *Canon Kabushiki Kaisha*, paragraph 17.

make direct comparisons between trade marks and must instead rely upon imperfect recollection.¹¹

77. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the marks are different, but concludes, due to the similarities between them, that the later mark is another brand of the owner of the earlier mark or a related undertaking (or vice versa).
78. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C., sitting 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.

79. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

¹¹ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

80. Earlier in this decision I have concluded that:

- the goods and services at issue range from being similar to a low degree to identical in comparison to the goods of the ‘547 mark;
- the goods at issue are identical in comparison to the goods of the ‘548 mark;
- the average consumer for the goods and services is a member of the general public, who will select the goods by predominantly visual means, but without dismissing the aural means, and the degree of attention will generally be average;
- the contested mark and the earlier mark ‘547 are visually similar to a high degree; the aural similarity between the marks cannot be assessed; and conceptually identical;
- the contested mark and the earlier mark ‘548 are visually similar to a low to medium degree; aurally dissimilar and conceptually similar to a medium degree;
- the earlier mark ‘547 is distinctive to a slightly above average degree whereas the earlier mark ‘548 will be more distinctive on account of the verbal elements, but the common element is likewise distinctive to a slightly above average degree. The use is not sufficient to establish enhanced distinctiveness of the marks.

81. As the earlier marks differ in one or more points, I will evaluate them separately.

Earlier mark '547

82. Taking into account the above factors and considering the principle of imperfect recollection, I am persuaded that there is a likelihood of direct confusion. I bear in mind that the earlier mark is distinctive to a slightly above average and that the visual interaction with the goods in Class 25 will play the most important part, where I found that the visual similarity between the respective marks is high. It is most likely that the average consumer will recall the figurative representation of the pair of handcuffs in the competing marks, whilst the different orientation and the broken chain, playing a less prominent role in the overall impression, in the contested mark may go unnoticed due to the principle of imperfect recollection. Notably, the confusion will be magnified by the conceptual identity created by the common conceptual 'hook' of the figurative representation of the handcuffs. All this together will lead the average consumer to mistake one mark for the other. This finding applies to the goods that I have found to be identical and similar to any degree, including those goods of low similarity. I accept that the finding is more arguable the less similar the goods are. However, even for those goods which may have only a low degree of similarity, I find the high degree of similarity between the marks, together with the distinctiveness of the earlier mark, means that there will still be confusion.

83. Even if the average consumer recalls the differences between the marks, such as that one mark consists of a broken handcuffs device and the other not, I still consider the marks would be indirectly confused for identical and similar goods, with the differences in the respective devices put down to the use of a brand variant.

Earlier mark '548

84. Considering first direct confusion, despite imperfect recollection and the identity of the goods in question, the differences between the marks on a visual and aural basis, mainly emanating from the presence of the additional word elements "JUDGE & JURY" in the earlier mark, are sufficient to inhibit the average consumer from misremembering or mistakenly recalling one mark as the other.
85. In terms of indirect confusion, the average consumer, having identified that the marks are different, including the additional word elements, will, though, assume that the identical goods are offered by the same or economically linked undertaking. The imperfect recollection of the handcuffs figurative element, the identity of the respective goods, the earlier mark's slightly above average degree of distinctiveness of the common element, and the conceptual similarity will aid the average consumer to perceive the marks as coming from the same or related undertaking. Notwithstanding the presence of the word elements that will equally contribute to the overall impression of the earlier mark, the conceptual 'hook', emanating from the common figurative element of handcuffs, will endure between the marks. Against this background, it is my view that the average consumer would believe that the marks are indicative of a sub-brand and there is some economic connection between them. As a result, I find there is a likelihood of indirect confusion for the identical goods.

Section 5(3) of the Act

86. At the commencement of these proceedings, sections 5(3) of the Act stated:

"(3) A trade mark which-

- (a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a

reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

87. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case

must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74* and *the court's answer to question 1 in L'Oreal v Bellure*).

88. The conditions of Section 5(3) are cumulative. First, the opponent must show that the earlier marks are similar to the contested mark. Second, the opponent must show that the mark has achieved a level of knowledge, or reputation, amongst a significant part of the public. Third, the opponent must establish that the public will make a link between the marks, in the sense of the first earlier mark being brought to mind by the contested mark. Fourth, assuming the foregoing conditions have been met, Section 5(3) requires that one or more of three types of damage claimed by the opponent will occur. It is not necessary for the purposes of Section 5(3) that the goods or services are similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.
89. As delineated earlier in this decision, the first condition of similarity between the marks is satisfied. The next condition is reputation. Reliance upon this ground requires evidence of a reputation amongst a significant part of the relevant public. The relevant date for the assessment under Section 5(3) is the filing date of the contested application, namely 15 May 2020.

Reputation

90. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in

particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

91. In *Spirit Energy Limited v Spirit Solar Limited* - BL O/034/20 – Mr Phillip Johnson, as the Appointed Person, held that the opponent had not established a qualifying reputation for Section 5(3) purposes. The opponent traded in solar energy equipment and installations and had used its mark in relation to such goods/services for 7 years prior to the relevant date in the proceedings. During the 5 years prior to the relevant date, it had installed solar energy generation equipment in over 1000 domestic homes and made over 700 installations for commercial customers. These sales had generated nearly £13m in income. However, there was limited evidence of advertising and promotion, and the amount spent promoting the mark had fallen in the years leading up to the relevant date. Additionally, the mark had only been used in South East England and the Midlands. Taking all the relevant factors into account, the Appointed Person therefore decided that such use of the mark was not sufficient to establish a reputation for the purposes of Section 5(3).
92. The opponent has contended that the earlier marks possess reputation in the UK in relation to goods in Class 25. Although I bear in mind that the question relates to a knowledge requirement, similar issues arise here as in relation to enhanced distinctive character. The evidence is thin in respect of market share and marketing expenditure. The evidence demonstrates a used mark, but not one with a significant annual turnover, as these figures are minimal and would only likely represent a small market

share for goods in the given industry. In addition, the advertising expenditure is considered to be fairly low and the media articles adduced fail to show that the opponent's earlier marks enjoy a significant presence in the relevant sector. In more detail, the media articles do not appear to indicate any consistent effort to educate the public about the marks or that such activity has built a reputation in the UK. Taking all of this into account, I am not satisfied that the opponent has established that it had a reputation in its marks at the relevant date. The opposition reliant upon section 5(3), therefore, fails.

CONCLUSION

93. **The opposition under Section 5(3) has failed, but under Section 5(2)(b) has been successful in its entirety.** Therefore, subject to appeal, the application will be refused.

COSTS

94. The opponent has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. I award costs to the opponent as a contribution towards the cost of the proceedings on the following basis:

Official application fees	£200
Preparing a statement and considering the counterstatement	£300
Filing written submissions in lieu	£200
Filing evidence	£650
Total	£1,350

95. I, therefore, order Sinitta Bright to pay Denim Merchants (UK) Limited the sum of £1,350. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 23rd day of December 2021

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General

ANNEX I – APPLICANT’S CLASS 25 SPECIFICATION

Class 25: Adhesive bras; Adhesive brassieres; After ski boots; Aikido suits; Aikido uniforms; Albs; Aloha shirts; American football bibs; American football pants; American football shirts; American football shorts; American football socks; Anglers' shoes; Ankle boots; Ankle socks; Anklets [socks]; Anoraks; Anoraks [parkas]; Anti-perspirant socks; Anti-sweat underclothing; Anti-sweat underwear; Après-ski boots; Apres-ski shoes; Aprons; Aprons [clothing]; Aqua shoes; Arm warmers [clothing]; Army boots; Articles of clothing; Articles of clothing for theatrical use; Articles of clothing made of hides; Articles of clothing made of leather; Articles of outer clothing; Articles of sports clothing; Articles of underclothing; Ascots; Ascots (ties); Athletic clothing; Athletic footwear; Athletic shoes; Athletic tights; Athletic uniforms; Athletics footwear; Athletics hose; Athletics shoes; Athletics vests; Babies' clothing; Babies' outerclothing; Babies' pants [clothing]; Babies' pants [underwear]; Babies' undergarments; Babushkas; Baby bibs [not of paper]; Baby bodysuits; Baby boots; Baby bottoms; Baby clothes; Baby doll pyjamas; Baby layettes for clothing; Baby pants; Baby sandals; Baby tops; Balaclavas; Ball gowns; Ballet shoes; Ballet slippers; Ballet suits; Ballroom dancing shoes; Bandanas; Bandanas [neckerchiefs]; Bandannas; Bandeaux [clothing]; Barber smocks; Baseball caps; Baseball caps and hats; Baseball hats; Baseball shoes; Baseball uniforms; Baselayer bottoms; Baselayer tops; Basic upper garment of Korean traditional clothes [Jeogori]; Basketball shoes; Basketball sneakers; Bath robes; Bath sandals; Bath slippers; Bathing caps; Bathing costumes; Bathing costumes for women; Bathing drawers; Bathing suit cover-ups; Bathing suits; Bathing suits for men; Bathing trunks; Bathrobes; Beach clothes; Beach clothing; Beach cover-ups; Beach footwear; Beach hats; Beach robes; Beach shoes; Beach wraps; Beachwear; Beanie hats; Beanies; Bed jackets; Bed socks; Belts [clothing]; Belts for clothing; Belts made from imitation leather; Belts made of leather; Belts made out of cloth; Belts (Money -) [clothing]; Belts of textile; Berets; Bermuda shorts; Bib overalls for hunting; Bib shorts; Bib tights; Bibs, not of paper; Bibs, sleeved, not of paper; Bikinis; Blazers; Bloomers; Blouses; Blouson jackets;

Blousons; Blue jeans; Board shorts; Boardshorts; Boas; Boas [clothing]; Boas [necklets]; Boaters; Bobble hats; Bodices; Bodices [lingerie]; Bodies [clothing]; Bodies [underclothing]; Body linen [garments]; Body stockings; Body suits; Body warmers; Bodysuits; Boiler suits; Boleros; Bolo ties; Bolo ties with precious metal tips; Bomber jackets; Bonnets; Bonnets [headwear]; Boot cuffs; Boot uppers; Bootees (woollen baby shoes); Booties; Boots; Boots for motorcycling; Boots for sport; Boots for sports; Boots (Ski -); Bottoms [clothing]; Bow ties; Bowling shoes; Bowties; Boxer briefs; Boxer shorts; Boxing shoes; Boxing shorts; Boy shorts [underwear]; Boys' clothing; Bra straps; Bra straps [parts of clothing]; Braces as suspenders; Braces for clothing; Braces for clothing [suspenders]; Braces [suspenders]; Bralettes; Bras; Brassieres; Breeches; Breeches for wear; Bridal garters; Bridal gowns; Bridesmaid dresses; Bridesmaids wear; Briefs; Briefs [underwear]; Bucket caps; Bucket hats; Burkhas; Burnouses; Bushjackets; Bustiers; Bustle holder bands for obi (obiage); Bustles for obi-knots (obiage-shin); Button down shirts; Button-front aloha shirts; Caftans; Cagoules; Camiknickers; Camisoles; Camouflage gloves; Camouflage jackets; Camouflage pants; Camouflage shirts; Camouflage vests; Canvas shoes; Cap peaks; Cap visors; Capelets; Capes; Capes (clothing); Capri pants; Caps; Caps being headwear; Caps [headwear]; Caps (Shower -); Caps with visors; Car coats; Cardigans; Cargo pants; Cashmere clothing; Cashmere scarves; Cassocks; Casual clothing; Casual footwear; Casual jackets; Casual shirts; Casual trousers; Casual wear; Casualwear; Chadors; Chaps; Chaps (clothing); Chasubles; Chefs' hats; Chefs' whites; Chemise tops; Chemises; Chemisettes; Cheongsams (Chinese gowns); Children's clothing; Childrens' clothing; Children's footwear; Children's headwear; Children's outerclothing; Children's wear; Chino pants; Choir robes; Christening gowns; Christening robes; Cleats for attachment to sports shoes; Climbing boots; Climbing boots [mountaineering boots]; Climbing footwear; Cloaks; Cloche hats; Clogs; Cloth bibs; Cloth bibs for adult diners; Clothes; Clothes for sport; Clothes for sports; Clothing; Clothing containing slimming substances; Clothing for babies; Clothing for children; Clothing for cycling; Clothing for cyclists; Clothing for fishermen; Clothing for gymnastics; Clothing for horse-riding [other than riding hats];

Clothing for infants; Clothing for leisure wear; Clothing for martial arts; Clothing for men, women and children; Clothing for skiing; Clothing for sports; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing incorporating LEDs; Clothing layettes; Clothing made of fur; Clothing made of imitation leather; Clothing made of leather; Clothing of imitations of leather; Clothing of leather; Coats; Coats for men; Coats for women; Coats made of cotton; Coats of denim; Coats (Top -); Cocktail dresses; Collar guards for protecting clothing collars; Collar liners for protecting clothing collars; Collar protectors; Collared shirts; Collars; Collars [clothing]; Collars for dresses; Combative sports uniforms; Combinations [clothing]; Corduroy pants; Corduroy shirts; Corduroy trousers; Corselets; Corsets; Corsets [clothing, foundation garments]; Corsets [foundation clothing]; Corsets [underclothing]; Costumes; Costumes for use in children's dress up play; Costumes for use in role-playing games; Costumes (Masquerade -); Cotton coats; Coveralls; Coverups; Cover-ups; Cowls [clothing]; Cravates; Cravats; Crew neck sweaters; Crinolines; Crop tops; Cuffs; Culotte skirts; Culottes; Cumberbunds; Cycling caps; Cycling Gloves; Cycling pants; Cycling shoes; Cycling shorts; Cycling tops; Cyclists' clothing; Dance clothing; Dance costumes; Dance shoes; Dance slippers; Deck shoes; Deck-shoes; Denim coats; Denim jackets; Denim jeans; Denim pants; Denims [clothing]; Desert boots; Detachable collars; Detachable neckpieces for kimonos (haneri); Dinner jackets; Dinner suits; Disposable slippers; Disposable underwear; Donkey jackets; Down jackets; Down vests; Drawers as clothing; Drawers [clothing]; Dress pants; Dress shields; Dress shirts; Dress shoes; Dress suits; Dresses; Dresses for evening wear; Dresses for infants and toddlers; Dresses made from skins; Dressing gowns; Driving gloves; Driving shoes; Duffel coats; Duffle coats; Dungarees; Dust coats; Ear muffs; Ear muffs [clothing]; Ear warmers; Ear warmers being clothes; Earbands; Earmuffs; Embossed heels of rubber or of plastic materials; Embossed soles of rubber or of plastic materials; Embroidered clothing; Espadrilles; Esparto shoes or sandals; Esparto shoes or sandles; Evening coats; Evening dresses; Evening gowns; Evening suits; Evening wear; Exercise wear; Eye masks; Fabric belts;

Fabric belts [clothing]; Fake fur hats; Fancy dress costumes; Fascinator hats; Fashion hats; Fedoras; Fezzes; Figure skating clothing; Fingerless gloves; Fingerless gloves as clothing; Fishermen's jackets; Fishing boots; Fishing clothing; Fishing footwear; Fishing headwear; Fishing jackets; Fishing shirts; Fishing smocks; Fishing vests; Fishing waders; Fitted swimming costumes with bra cups; Fittings of metal for boots and shoes; Fittings of metal for footwear; Flat caps; Flat shoes; Fleece jackets; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Fleeces; Flip-flops; Flip-flops for use as footwear; Flying suits; Foam pedicure slippers; Folk costumes; Foot volleyball shoes; Football boots; Football boots (Studs for -); Football jerseys; Football shirts; Football shoes; Footless socks; Footless tights; Footmuffs, not electrically heated; Footwear; Footwear [excluding orthopedic footwear]; Footwear (Fittings of metal for -); Footwear for men; Footwear for men and women; Footwear for snowboarding; Footwear for sport; Footwear for sports; Footwear for track and field athletics; Footwear for use in sport; Footwear for women; Footwear made of vinyl; Footwear made of wood; Footwear (Non-slipping devices for -); Footwear not for sports; Footwear soles; Footwear (Tips for -); Footwear uppers; Footwear (Welts for -); Formal evening wear; Formal wear; Formalwear; Foulards [clothing articles]; Foundation garments; Frames (Hat -) [skeletons]; Frock coats; Full-length kimonos (nagagi); Functional underwear; Fur cloaks; Fur coats; Fur coats and jackets; Fur hats; Fur jackets; Fur muffs; Fur stoles; Furs [clothing]; Gabardines; Gabardines [clothing]; Gaiter straps; Gaiters; Galoshes; Garments for protecting clothing; Garrison caps; Garter belts; Garters; Gauchos; Gilets; Girdles; Girdles [corsets]; Girls' clothing; Gloves; Gloves as clothing; Gloves [clothing]; Gloves for apparel; Gloves for cyclists; Gloves including those made of skin, hide or fur; Gloves with conductive fingertips that may be worn while using handheld electronic touch screen devices; Golf caps; Golf clothing, other than gloves; Golf footwear; Golf shirts; Golf shoes; Golf shorts; Golf skirts; Golf trousers; Goloshes; Gowns; Greatcoats; G-strings; Guernseys; Gussets for bathing suits [parts of clothing]; Gussets for footlets [parts of clothing]; Gussets for leotards [parts of clothing]; Gussets for stockings [parts of clothing]; Gussets for tights [parts of clothing];

Gussets for underwear [parts of clothing]; Gussets [parts of clothing]; Gym boots; Gym shorts; Gym suits; Gymnastic shoes; Gymshoes; Gymwear; Hairdressing capes; Half-boots; Halloween costumes; Halter tops; Handball shoes; Handwarmers [clothing]; Haneri [detachable neckpieces for kimonos]; Hat frames [skeletons]; Hats; Hats (Paper -) [clothing]; Head bands; Head scarves; Head sweatbands; Head wear; Headbands; Headbands against sweating; Headbands [clothing]; Headbands for clothing; Headdresses [veils]; Headgear; Headgear for wear; Headscarfs; Headscarves; Headshawls; Headsquares; Headwear; Heavy coats; Heavy jackets; Heel inserts; Heel pieces for shoes; Heel pieces for stockings; Heel protectors for shoes; Heelpieces for footwear; Heelpieces for stockings; Heels; Hidden heel shoes; High rain clogs (ashida); High-heeled shoes; Hijabs; Hiking boots; Hiking shoes; Hockey shoes; Hooded bathrobes; Hooded pullovers; Hooded sweat shirts; Hooded sweatshirts; Hooded tops; Hoodies; Hoods; Hoods [clothing]; Horse-riding boots; Horse-riding pants; Hosiery; House coats; Housecoats; Hunting boot bags; Hunting boots; Hunting jackets; Hunting pants; Hunting shirts; Hunting vests; Imitation leather dresses; Infant clothing; Infant wear; Infants' boots; Infants' clothing; Infants' footwear; Infants' shoes; Infants' trousers; Infantwear; Inner socks for footwear; Inner soles; Innersocks; Insoles; Insoles for footwear; Insoles for shoes and boots; Insoles [for shoes and boots]; Intermediate soles; Jacket liners; Jackets; Jackets being sports clothing; Jackets [clothing]; Jackets (Stuff -) [clothing]; Japanese footwear of rice straw (waraji); Japanese kimonos; Japanese sleeping robes (nemaki); Japanese sleeping robes [nemaki]; Japanese split-toed work footwear (jikatabi); Japanese style clogs and sandals; Japanese style sandals of felt; Japanese style sandals of leather; Japanese style sandals (zori); Japanese style socks (tabi); Japanese style socks (tabi covers); Japanese style wooden clogs (geta); Japanese toe-strap sandals (asaurazori); Japanese traditional clothing; Jeans; Jerkins; Jerseys; Jerseys [clothing]; Jockstraps [underwear]; Jodhpurs; Jogging bottoms; Jogging bottoms [clothing]; Jogging outfits; Jogging pants; Jogging sets [clothing]; Jogging shoes; Jogging suits; Jogging tops; Judo suits; Judo uniforms; Jump Suits; Jumper dresses; Jumper suits; Jumpers; Jumpers [pullovers];

Jumpers [sweaters]; Jumpsuits; Kaftans; Karate suits; Karate uniforms; Kendo outfits; Kerchiefs; Kerchiefs [clothing]; Khakis; Khimars; Kilts; Kimonos; Knee highs; Knee warmers [clothing]; Knee-high stockings; Knickerbockers; Knickers; Knit jackets; Knit shirts; Knit tops; Knitted baby shoes; Knitted caps; Knitted clothing; Knitted gloves; Knitted tops; Knitted underwear; Knitwear; Knitwear [clothing]; Knot caps; Korean outer jackets worn over basic garment [Magoja]; Korean topcoats [Durumagi]; Korean traditional women's waistcoats [Baeja]; Laboratory coats; Lace boots; Ladies' boots; Ladies' clothing; Ladies' dresses; Ladies' footwear; Ladies' outerclothing; Ladies' sandals; Ladies' suits; Ladies' underwear; Ladies wear; Latex clothing; Layettes; Layettes [clothing]; Leather belts [clothing]; Leather clothing; Leather (Clothing of -); Leather (Clothing of imitations of -); Leather coats; Leather dresses; Leather garments; Leather headwear; Leather jackets; Leather pants; Leather shoes; Leather slippers; Leather suits; Leather waistcoats; Leg warmers; Leggings [leg warmers]; Leggings [trousers]; Legwarmers; Leg-warmers; Leisure clothing; Leisure footwear; Leisure shoes; Leisure suits; Leisure wear; Leisurewear; Leotards; Light-reflecting coats; Light-reflecting jackets; Linen (Body -) [garments]; Lingerie; Linings (Ready-made -) [parts of clothing]; Liveries; Long jackets; Long johns; Long sleeve pullovers; Long sleeved vests; Long underwear; Long-sleeved shirts; Lounge pants; Loungewear; Lounging robes; Low wooden clogs (hiyori-geta); Low wooden clogs (koma-geta); Low wooden clogs [koma-geta]; Lumberjackets; Mackintoshes; Maillots; Maillots [hosiery]; Maniples; Mankinis; Mantillas; Mantles; Martial arts uniforms; Masks (Sleep -); Masquerade and halloween costumes; Masquerade costumes; Maternity bands; Maternity clothing; Maternity dresses; Maternity leggings; Maternity lingerie; Maternity pants; Maternity shirts; Maternity shorts; Maternity sleepwear; Maternity smocks; Maternity tops; Maternity underwear; Maternity wear; Men's and women's jackets, coats, trousers, vests; Men's clothing; Men's dress socks; Men's sandals; Men's socks; Men's suits; Men's underwear; Menswear; Metal fittings for Japanese style wooden clogs; Military boots; Millinery; Miniskirts; Miters [hats]; Mitres [hats]; Mittens; Mitts [clothing]; Moccasins; Mock turtleneck shirts; Mock turtleneck sweaters; Mock turtlenecks; Moisture-wicking

sports bras; Moisture-wicking sports pants; Moisture-wicking sports shirts; Money belts [clothing]; Monokinis; Morning coats; Motorcycle gloves; Motorcycle jackets; Motorcycle rain suits; Motorcycle riding suits; Motorcyclist boots; Motorcyclists' clothing; Motorcyclists' clothing of leather; Motorists' clothing; Mountaineering boots; Mountaineering shoes; Mufflers; Mufflers as neck scarves; Mufflers [clothing]; Mufflers [neck scarves]; Muffs; Muffs [clothing]; Mukluks; Mules; Muumuus; Nappy pants [clothing]; Neck gaiters; Neck scarfs [mufflers]; Neck scarves; Neck scarves [mufflers]; Neck tube scarves; Neck tubes; Neck warmers; Neckbands; Neckerchiefs; Neckerchieves; Neckties; Neckwear; Negligees; Night gowns; Night shirts; Nightcaps; Nightdresses; Nightgowns; Nighties; Nightshirts; Nightwear; Nipple pasties; Niqabs; Non-slip socks; Non-slipping devices for boots; Non-slipping devices for footwear; Nurse dresses; Nurse overalls; Nurse pants; Nurses' uniforms; Nursing bras; Nursing shoes; Oilskins [clothing]; One-piece clothing for infants and toddlers; One-piece playsuits; One-piece suits; Open-necked shirts; Outer clothing; Outer soles; Outerclimbing; Outerclimbing for boys; Outerclimbing for girls; Outerclimbing for men; Outerwear; Overalls; Overalls for infants and toddlers; Overcoats; Overshirts; Overshoes; Overtrousers; Over-trousers; Padded jackets; Padded pants for athletic use; Padded shirts for athletic use; Padded shorts for athletic use; Pajama bottoms; Pajamas; Pajamas (Am.); Pantaloon; Pantie-girdles; Panties; Pants; Pants (Am.); Pantsuits; Pantyhose; Paper aprons; Paper clothing; Paper hats [clothing]; Paper hats for use as clothing items; Paper hats for wear by chefs; Paper hats for wear by nurses; Pareos; Pareus; Parkas; Parts of clothing, footwear and headgear; Party hats [clothing]; Pea coats; Peaked caps; Peaked headwear; Peaks (Cap -); Pedal pushers; Pedicure sandals; Pedicure slippers; Peignoirs; Pelerines; Pelisses; Petticoats; Petti-pants; Pinafore dresses; Pinafores; Pique shirts; Pirate pants; Plastic aprons; Plastic baby bibs; Plastic slippers; Platform shoes; Play suits; Playsuits [clothing]; Pleated skirts; Pleated skirts for formal kimonos (hakama); Plimsolls; Plus fours; Plush clothing; Pocket kerchiefs; Pocket squares; Pocket squares [clothing]; Pockets for clothing; Polar fleece jackets; Polo boots; Polo knit tops; Polo neck jumpers; Polo

shirts; Polo sweaters; Ponchos; Pop socks; Pram suits; Printed t-shirts; Protective metal members for shoes and boots; Pullovers; Pullstraps for shoes and boots; Pumps [footwear]; Puttees; Puttees; Pyjamas; Pyjamas [from tricot only]; Quilted jackets [clothing]; Quilted vests; Rain boots; Rain coats; Rain hats; Rain jackets; Rain ponchos; Rain shoes; Rain slickers; Rain suits; Rain trousers; Rain wear; Raincoats; Rainproof clothing; Rainproof jackets; Rainshoes; Rainwear; Ramie shirts; Rash guards; Ready-made clothing; Ready-made linings [parts of clothing]; Ready-to-wear clothing; Referees uniforms; Religious garments; Removable collars; Replica football kits; Reversible jackets; Riding boots; Riding gloves; Riding Gloves; Riding jackets; Riding shoes; Riding trousers; Robes; Robes (Bath -); Roll necks [clothing]; Roller shoes; Romper suits; Rompers; Ruanas; Rubber fishing boots; Rubber shoes; Rubber soles for jikatabi; Rubbers [footwear]; Rugby boots; Rugby jerseys; Rugby shirts; Rugby shoes; Rugby shorts; Rugby tops; Running shoes; Running Suits; Running vests; Russian felted boots (Valenki); Sabots; Safari jackets; Sailing wet weather clothing; Sailor suits; Salopettes; Sandal-clogs; Sandals; Sandals and beach shoes; Sarees; Saris; Sarongs; Sash bands for kimono (obi); Sashes for wear; Scarfs; Scarves; School uniforms; Scrimmage vests; Sedge hats (suge-gasa); Serapes; Shampoo capes; Shapewear; Shawls; Shawls and headscarves; Shawls and stoles; Shawls [from tricot only]; Sheepskin coats; Sheepskin jackets; Shell jackets; Shell suits; Shields (Dress -); Shift dresses; Shirt fronts; Shirt yokes; Shirt-jacs; Shirts; Shirts and slippers; Shirts for suits; Shoe covers, other than for medical purposes; Shoe inserts for non-orthopedic purposes; Shoe soles; Shoe soles for repair; Shoe straps; Shoe uppers; Shoes; Shoes for casual wear; Shoes for foot volleyball; Shoes for infants; Shoes for leisurewear; Shoes soles for repair; Shoes with hook and pile fastening tapes; Short overcoat for kimono (haori); Short petticoats; Short sets [clothing]; Short trousers; Shortalls; Shorts; Shorts [clothing]; Short-sleeve shirts; Short-sleeved shirts; Short-sleeved T-shirts; Shoulder scarves; Shoulder straps for clothing; Shoulder wraps; Shoulder wraps [clothing]; Shoulder wraps for clothing; Shower caps; Shrugs; Silk clothing; Silk scarves; Silk ties; Singlets; Skating outfits; Ski and snowboard shoes and parts thereof; Ski

balACLavas; Ski boot bags; Ski boots; Ski gloves; Ski hats; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Skirt suits; Skirts; Skorts; Skull caps; Slacks; Sleep masks; Sleep pants; Sleep shirts; Sleeping garments; Sleepsuits; Sleepwear; Sleeved jackets; Sleeveless jackets; Sleeveless jerseys; Sleeveless pullovers; Sliding shorts; Slip-on shoes; Slipovers; Slipovers [clothing]; Slipper socks; Slipper soles; Slippers; Slippers made of leather; Slips; Slips [clothing]; Slips [underclothing]; Slips [undergarments]; Small hats; Smocks; Smoking jackets; Snap crotch shirts for infants and toddlers; Sneakers; Sneakers [footwear]; Snoods [scarves]; Snow boarding suits; Snow boots; Snow pants; Snow suits; Snowboard boots; Snowboard gloves; Snowboard jackets; Snowboard mittens; Snowboard shoes; Snowboard trousers; Snowsuits; Soccer bibs; Soccer boots; Soccer shirts; Soccer shoes; Sock suspenders; Socks; Socks and stockings; Socks for infants and toddlers; Socks for men; Soles for footwear; Soles for Japanese style sandals; Soles [Inner]; Spats; Spiked running shoes; Sport coats; Sport shirts; Sport shoes; Sport stockings; Sports bibs; Sports [Boots for -]; Sports bras; Sports caps; Sports caps and hats; Sports clothing; Sports clothing [other than golf gloves]; Sports footwear; Sports garments; Sports headgear [other than helmets]; Sports jackets; Sports jerseys; Sports jerseys and breeches for sports; Sports over uniforms; Sports overuniforms; Sports pants; Sports shirts; Sports shirts with short sleeves; Sports shoes; Sports singlets; Sports socks; Sports vests; Sports wear; Sportswear; Stiffeners for boots; Stiffeners for shoes; Stocking suspenders; Stockings; Stockings (Heel pieces for -); Stockings [sweat-absorbent]; Stockings (Sweat-absorbent -); Stoles; Stoles (Fur -); Strapless bras; Strapless brassieres; Straps (Gaiter -); Stretch pants; String fasteners for haori (haori-himo); Studs for football boots; Stuff jackets; Stuff jackets [clothing]; Suede jackets; Suit coats; Suits; Suits (Bathing -); Suits made of leather; Suits of leather; Sun hats; Sun visors; Sun visors [headwear]; Sundresses; Sunsuits; Surf wear; Surfwear; Suspender belts; Suspender belts for men; Suspender belts for women; Suspenders; Suspenders [braces]; Swaddling clothes; Sweat bands; Sweat bands for the head; Sweat bands for the wrist; Sweat bottoms;

Sweat jackets; Sweat pants; Sweat shirts; Sweat shorts; Sweat suits; Sweat-absorbent socks; Sweat-absorbent stockings; Sweat-absorbent underclothing; Sweat-absorbent underclothing [underwear]; Sweat-absorbent underwear; Sweatbands; Sweaters; Sweatjackets; Sweatpants; Sweatshirts; Sweatshorts; Sweatsuits; Swim briefs; Swim caps; Swim shorts; Swim suits; Swim trunks; Swim wear for children; Swim wear for gentlemen and ladies; Swimming caps; Swimming caps [bathing caps]; Swimming costumes; Swimming suits; Swimming trunks; Swimsuits; Swimwear; Synthetic fur stoles; Tabards; Taekwondo suits; Taekwondo uniforms; Tail coats; Tailleurs; Tam o'shanter; Tams; Tank tops; Tankinis; Tank-tops; Tap pants; Tap shoes; Tartan kilts; Teddies; Teddies [underclothing]; Teddies [undergarments]; Tee-shirts; Tennis dresses; Tennis pullovers; Tennis shirts; Tennis shoes; Tennis shorts; Tennis skirts; Tennis socks; Tennis sweatbands; Tennis wear; Theatrical costumes; Thermal clothing; Thermal headgear; Thermal socks; Thermal underwear; Thermally insulated clothing; Thobes; Thong sandals; Thongs; Three piece suits [clothing]; Ties; Ties [clothing]; Tightening-up strings for kimonos (datejime); Tights; Tips for footwear; Toe boxes; Toe socks; Toe straps for Japanese style sandals [zori]; Toe straps for Japanese style wooden clogs; Toe straps for zori [Japanese style sandals]; Togas; Tongues for shoes and boots; Top coats; Top hats; Topcoats; Tops; Tops [clothing]; Toques [hats]; Track and field shoes; Track jackets; Track pants; Track suits; Tracksuit bottoms; Tracksuit tops; Tracksuits; Traction attachments for footwear; Trainers; Trainers [footwear]; Training shoes; Training suits; Trekking boots; Trench coats; Trenchcoats; Trews; Triathlon clothing; Trouser socks; Trouser straps; Trousers; Trousers for children; Trousers for sweating; Trousers of leather; Trousers shorts; Trunks; Trunks (Bathing -); Trunks being clothing; Trunks [underwear]; T-shirts; Tube tops; Tunics; Turbans; Turtleneck pullovers; Turtleneck shirts; Turtleneck sweaters; Turtleneck tops; Turtlenecks; Tutus; Tuxedo belts; Tuxedos; Twin sets; Umpires uniforms; Under garments; Under shirts; Underarm gussets [parts of clothing]; Underclothes; Underclothing; Underclothing (Anti-sweat -); Underclothing for women; Undergarments; Underpants; Underpants for babies; Undershirts; Undershirts for kimonos

(juban); Undershirts for kimonos (koshimaki); Undershirts for kimonos [koshimaki]; Underskirts; Underwear; Underwear (Anti-sweat -); Underwear for women; Uniforms; Uniforms for commercial use; Uniforms for nurses; Union suits; Unitards; Uppers (Footwear -); Uppers for Japanese style sandals; Uppers of woven rattan for Japanese style sandals; Ushankas [fur hats]; Valenki [felted boots]; Veils; Veils [clothing]; Vest tops; Vests; Vests (Fishing -); Vests for use in barber shops and salons; Visors; Visors being headwear; Visors [clothing]; Visors [hatmaking]; Visors [headwear]; V-neck sweaters; Volleyball jerseys; Volleyball shoes; Waders; Waist belts; Waist cinchers; Waist strings for kimonos (koshihimo); Waistbands; Waistcoats; Waistcoats [vests]; Walking boots; Walking breeches; Walking shoes; Walking shorts; Warm up suits; Warm-up jackets; Warm-up pants; Warm-up suits; Warm-up tops; Water socks; Waterpolo caps; Waterproof boots; Waterproof boots for fishing; Waterproof capes; Waterproof clothing; Waterproof jackets; Waterproof outerclothing; Waterproof pants; Waterproof shoes; Waterproof suits for motorcyclists; Waterproof trousers; Water-resistant clothing; Waterskiing suits; Weather resistant outer clothing; Weatherproof clothing; Weatherproof jackets; Weatherproof pants; Wedding dresses; Wedding garters; Wedding gowns; Wedge sneakers; Wellington boots; Wellingtons; Welts for footwear; Wet suits; Wet suits for surfing; Wet suits for water-skiing; Wet suits for water-skiing and sub-aqua; Wet suits for windsurfing; Wetsuit gloves; Wetsuits; Wetsuits for surface watersports; Wetsuits for surfing; Wetsuits for water-skiing; White coats for hospital use; Wimples; Wind coats; Wind jackets; Wind pants; Wind resistant jackets; Wind suits; Wind vests; Windcheaters; Wind-jackets; Windproof clothing; Windproof jackets; Wind-resistant jackets; Wind-resistant vests; Windshirts; Winter boots; Winter coats; Winter gloves; Women's ceremonial dresses; Women's clothing; Women's foldable slippers; Womens' outerclothing; Women's shoes; Women's suits; Womens' underclothing; Womens' undergarments; Women's underwear; Wooden bodies for Japanese style clogs; Wooden main bodies of Japanese style wooden clogs; Wooden shoes; Wooden shoes [footwear]; Wooden supports of Japanese style wooden clogs; Woolen clothing; Woollen

socks; Woollen tights; Woolly hats; Work boots; Work clothes; Work overalls; Work shoes; Working overalls; Woven clothing; Woven shirts; Wrap belts for kimonos (datemaki); Wraps [clothing]; Wrist bands; Wrist warmers; Wristbands; Wristbands [clothing]; Yashmaghs; Yashmaks; Yoga bottoms; Yoga pants; Yoga shirts; Yoga shoes; Yoga socks; Yoga tops; Yokes (Shirt-); Zoot suits; Zori.