

O/189/19

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION OF INTERNATIONAL  
REGISTRATIONS NOS. 1330134, 1336257 AND 1344000 BY  
CENTURION CORPORATION LIMITED FOR PROTECTION OF THE  
FOLLOWING TRADE MARKS IN CLASSES 36 & 43:

**DWELL STUDENT  
DWELL**




AND

IN THE MATTER OF THE OPPOSITIONS THERETO  
UNDER NOS. 410349, 410381 AND 410384 BY  
COIN FURNITURE LIMITED

## Background and pleadings

1. Centurion Corporation Limited (“the holder”) designated the following International Registrations (IRs) for protection in the UK. They were accepted and published in the Trade Marks Journal in respect of the services shown in the table below.

Marks	Services
<p>IR1330134</p> <p><b>DWELL STUDENT</b></p> <p>Priority date: 11 August 2016</p> <p>Designated on 18 October 2016</p> <p>Published on 23 June 2017</p>	<p><u>Class 36</u></p> <p>Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.</p> <p><u>Class 43</u></p> <p>Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</p>
<p>IR1336257</p> <p><b>DWELL</b></p> <p>Priority date: 11 August 2016</p> <p>Designated on 25 October 2016</p>	<p><u>Class 36</u></p> <p>Management of real estate; apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real</p>

Marks	Services
<p>Published on 30 June 2017</p>	<p>estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.</p> <p><u>Class 43</u> Accommodation bureau (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</p>
<p>IR1344000</p>  <p>Priority date: 11 August 2016 Designated on 18 October 2016 Published on 28 July 2017</p>	<p><u>Class 36</u> Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.</p> <p><u>Class 43</u> Accommodation bureaux (boarding houses); agency services for the reservation of temporary accommodation; arranging of temporary accommodation; arranging of meals; boarding houses; boarding house bookings; cafeteria services; canteen</p>

Marks	Services
	services; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing food and drink, and temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.

2. The IRs were opposed by Coin Furniture Limited (“the opponent”). The oppositions have been consolidated and are based upon sections 5(2)(a), 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The opposition concerns all services covered by the IRs.
  
3. The opponent’s claim based upon section 5(2)(a) has been raised against IR1336257 and the opponent is relying upon the European Union and UK trade marks shown in the table below. Full specifications for these marks can be found in Annex A to this decision. I shall refer to these as “the DWELL word marks”.

Marks	Classes
EUTM9534711 (“the 711 mark”)  DWELL  Applied for on 18 November 2010 Registered on 6 May 2011	18, 20, 21, 27, 28, 35
UKTM2636692 (“the 692 mark”)  DWELL  Applied for on 1 October 2012 Registered on 15 March 2013	18

<b>Marks</b>	<b>Classes</b>
EUTM10288041 ("the 041 mark")  DWELL  Applied for on 23 September 2011 Registered on 27 June 2015	2, 4, 9, 11, 14, 16, 19, 21, 24, 25, 31, 39, 41, 42, 43
UKTM2430056 ("the 056 mark")  DWELL  Applied for on 16 August 2006 Registered on 21 August 2009	2, 4, 8, 9, 14, 16, 18, 20, 21, 25, 27, 28, 31, 39, 41, 42, 43.
UKTM2323179 ("the 179 mark")  DWELL  Applied for on 8 February 2003 Registered on 12 September 2003	8, 11, 20, 21, 24, 35.

4. With regards to its claims based upon Sections 5(2)(b) and 5(3) of the Act, which have been raised against all the contested marks, the opponent is relying upon all the marks shown in the above table, along with the following trade mark:

<b>Mark</b>	<b>Classes</b>
UKTM2486083 ("the 083 mark")  DWELL LIVE LIKE THIS  Applied for on 28 April 2008 Registered on 10 September 2010	11, 16, 20, 21, 24, 27, 35, 39, 42.

A full specification can be found in Annex A to this decision. I shall refer to the opponent's marks as a whole as "the DWELL marks".

5. For sections 5(2)(a) and 5(2)(b) of the Act, the opponent is relying on all the goods and services covered by the earlier marks. The opponent claims that the marks are similar and that the services covered by the holder's specification are similar to goods and services covered by the earlier marks, leading to a likelihood of confusion on the part of the public. Therefore, designation of the IRs for protection in the UK should be refused under sections 5(2)(a) and 5(2)(b) of the Act.
6. Additionally, or alternatively, the opponent claims that:
  - the similarity between its marks and the holder's marks is such that the relevant public will believe that they are used by the same undertaking or think that there is an economic connection between the users of the trade marks;
  - even if the undertakings are not perceived as connected, use of the holder's marks for all the services covered by their specifications would take unfair advantage of the reputation of the earlier marks by riding on the coat-tails of the opponent and gaining the benefits associated with highly reputed and distinctive marks without the associated costs of developing or maintaining such a reputation;
  - such use may tarnish the opponent's reputation on account of its involuntary association with third party services which may be of a lower quality. The opponent adds that in its view the risk is all the more likely given that the market within which the opponent and holder are operating is frequently subject to publicly available reviews and listings;
  - the holder's use of its marks may erode the distinctiveness of the opponent's marks and impair the marks' ability to be instantly recognised as indicating the trade origin of the opponent's goods and services, and that this will make

it less likely that consumers will purchase the opponent's goods and services, and will result in a corresponding change in economic behaviour, causing detriment to the opponent's mark.

Therefore, designation of the IRs for protection in the UK should be refused under section 5(3) of the Act.

7. Under section 5(4)(a) of the Act, the opponent claims that use of the holder's marks for all the services covered by their specifications is liable to be prevented under the law of passing off, owing to its goodwill attached to the signs **DWELL** and **DWELL LIVE LIKE THIS**, which it claims to have used throughout the UK since November 2003 and approximately 2008 respectively, for the following goods and services, which are also covered by the some of the earlier marks:

*Tableware; cutlery; knives, forks, spoons; parts and fittings for all the aforesaid goods.*

*Bathroom furniture in the form of sanitary ware; sanitary ware; sanitary ware made of ceramic materials; sanitary ware made of plastic; sanitary ware made of porcelain; sanitary ware made of stoneware; stainless steel sanitary ware; lighting and lighting installations; parts and fittings for all the aforesaid goods.*

*Furniture; stools, chairs; picture frames; ornaments made of wood, wax, plaster or plastic; cushions; wine racks and spice racks; trays and bins; magazine racks; wine cases; tables; storage boxes; bathroom furniture and bathroom cabinets; towel rings; shelves; storage units; hooks; curtain rings, tracks and poles; baskets; window boxes made of plastic and wood; umbrella stands; table mats; mirrors; parts and fittings for all the aforesaid goods.*

*Household and kitchen utensils and containers; glassware, earthenware, porcelain, pottery, china; crockery; coasters; lunch boxes, cooler boxes and picnic baskets; combs and sponges; biscuit tins and bread bins; wine stoppers and cork screws; ice buckets and cocktail shakers; salt and pepper mills; bottle*

*openers; kitchen and barbecue utensils; cookware; mugs; kettles, teapots and cafetieres; towel rolls; toilet brushes; laundry bins; fruit juicer; graters; fruit bowls; beakers, toothbrushes, toothbrush holders; soap dishes; light pulls; chopping boards; flasks; oven gloves; parts and fittings for all the aforesaid goods.*

*Textile piece goods; textile articles; bed linen; bedspreads; bed clothes; duvets; quilts; eiderdowns; sheets; blankets; duvet covers; pillow cases; wall hangings; curtains; cushion covers; furniture covers; furnishing fabrics; table linen; table cloths; table mats; napkins; kitchen linen; towels; textiles for decoration purposes.*

*Advertising; retail services connected with furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings; retail services connected with furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings provided via a mail order catalogue, or from a website specialising in the sale of furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings; information, advisory and consultancy services relating to all of the aforesaid.*

*Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles; packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines, catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information services relating to all the aforesaid.*

8. The holder filed a defence and counterstatement, denying all the grounds. It also put the opponent to proof of use of the 711, 083, 056 and 179 marks for all the goods and services covered by those marks and relied on in the opposition.



9. Both the opponent and the holder filed evidence in these proceedings. This will be summarised to the extent that is considered necessary.
10. The holder and opponent also filed written submissions on 18 May 2018 and 26 October 2018 respectively. These will not be summarised but will be referred to as and where appropriate during this decision.
11. A hearing took place on 5 February 2019, with the opponent represented by Mr Leighton Cassidy of Fieldfisher LLP and the holder by Ms Charlotte Blythe of Counsel, instructed by Kilburn & Strode LLP.

### **Relevant dates**

12. Some of the opponent's earlier marks had been registered for more than five years on the date(s) on which the contested designations were published. They are, therefore, subject to the proof of use provisions under section 6A of the Act, and the holder has requested such proof for all goods and services in the specifications. The opponent states that it has made genuine use of the marks in the EU, including the UK, or the UK alone, as appropriate, in the relevant period for all the goods and services upon which it is relying. The relevant period for these purposes is the five years prior to and ending on the date of publication of the contested designations. The relevant date for the purposes of sections 5(2) and 5(3) is the date the application for designation was filed.
13. The opponent must also satisfy the Tribunal that the unregistered signs it is relying on under section 5(4)(a) of the Act would have been protectable by virtue of the law of passing off before the relevant date. The holder has not claimed or filed any evidence that it has been using its marks before the date of application for designation, so this is the only relevant date for the purposes of section 5(4)(a).
14. The table below shows the relevant dates and periods for each of the contested designations:

Mark	Relevant Period for Proof of Use of the Opponent's Marks	Relevant Date
IR1330134	24 June 2012 – 23 June 2017	18 October 2016
IR1336257	1 July 2012 – 30 June 2017	25 October 2016
IR1344000	29 July 2012 – 28 July 2017	18 October 2016

## Evidence

### *Opponent's evidence in chief*

15. The opponent's evidence comes from Mr Aamir Ahmad, Chief Executive Officer of Coin Furniture Limited ("Coin"), incorporated on 26 June 2013 in order to acquire and hold the assets of Dwell Retail Limited ("Dwell Retail"), which went into administration on 25 June 2013. It is dated 19 March 2018.
16. Mr Ahmad founded Dwell Retail, a furniture and home accessories retailer, in 2003 and was its Managing Director and majority shareholder until November 2012, when a private equity firm took a majority stake in the business. At the time he left the company, it had 23 shops in the UK, including a flagship store at the Westfield shopping centre at Queen Elizabeth Olympic Park in Stratford, London.
17. Following the business's fall into administration and the opponent's purchase of its assets, six stores were re-opened: three in London (Tottenham Court Road, Westfield White City and Westfield Stratford City), and the others at the Trafford Centre, Manchester, Lakeside Retail Park in Essex, and Princes Square in Glasgow. In February 2014, sofa retailer DFS Furniture Limited agreed to provide "modest financial support".<sup>1</sup> Six months later, it acquired the business in full. Further openings followed, and these included "stores in stores"

---

<sup>1</sup> See Exhibit AA6.

in DFS branches around the UK. According to Mr Ahmad’s witness statement, there were 20 stores open by December 2017.

18. From the start, Dwell Retail was a multichannel retailer, selling through physical stores, catalogues and a website. Exhibit AA4 contains printouts from the website from 19 November 2003 to 22 September 2017, retrieved using the “Wayback Machine”. Mr Ahmad states that the website regularly attracts 70,000 to 90,000 visitors per week.
19. In January 2013, the customer database contained 988,068 contacts. By January 2017, this had risen to 1,603,546. Mr Ahmad states that “last year”, Dwell Retail mailed 2,768,919 catalogues to people on the database.
20. The table below shows turnover figures for Dwell Retail from January 2007 to July 2017:

<b>Date full accounts submitted</b>	<b>Turnover (£ sterling)</b>
July 2017	32,971,000
July 2016	24,430,000
July 2015	16,705,000
July 2014	11,387,000
January 2012	34,497,703
January 2011	33,385,870
January 2010	24,874,346
January 2009	24,772,608
January 2008	15,638,928
January 2007	6,319,972

21. Exhibit AA10 contains a sample of invoices showing sales of furniture and accessories to customers in France, Spain, the UK, Ireland, Italy, the Netherlands and Germany. The earliest of these is dated 16 August 2013 and the most recent 26 January 2016. Mr Ahmad also states that the website attracted 96,000 visitors from EU countries other than the UK.<sup>2</sup>

<sup>2</sup> The top five are (in descending order): France, Germany, Ireland, Spain and the Netherlands.

22. The total annual advertising, marketing and promotional expenditure for Dwell Retail in the UK and the EU since 2008 is shown in the table below:

Marketing costs: £'000	Actual										
	Jan'08	Jan'09	Jan'10	Jan'11	Jan'12	Jan'13	Jan'14	Jul '15	Jul'16	Jul'17	Jul' 18 (forecast)
Direct Marketing		£742	£1,413	£1,576	£1,423	£1,185	£647	£587	£690	£834	£592
Advertising	£1,240	£388	£280	£611	£584	£566	£342	£518	£739	£843	£834
PR		£114	£92	£80	£115	£139	£70	£50	£112	£0	£0
Other		£118	£76	£288	£432	£386	£105	£110	£148	£523	£382
Web advertising		£389	£375	£432	£422	£441	£415	£192	£331	£637	£790
<b>Marketing costs:</b>	<b>£1,629</b>	<b>£1,737</b>	<b>£2,293</b>	<b>£2,977</b>	<b>£2,994</b>	<b>£2,692</b>	<b>£1,356</b>	<b>£1,596</b>	<b>£2,326</b>	<b>£2,992</b>	<b>£2,658</b>

Exhibits AA12 and AA13 contain examples of advertisements that have appeared in publications such as the *Evening Standard*, *Independent on Sunday*, *The Times* and *Good Homes*.

23. The opponent also uses the Dwell marks on social media. Exhibit AA17 contains print outs from Facebook, Twitter and Instagram showing the number of followers. The printouts were made on 21 February 2018 (Facebook and Twitter) and 23 February 2018 (Instagram), and so are outside the relevant period.
24. Mr Ahmad claims that Dwell Retail has a high reputation in the interior design sector and that “a large number of respected interior designers and design specifiers come to our stores for design advice”. He also lists celebrities with whom he says the brand is popular, including actors Salma Hayek and Jude Law, and Olympic diver Tom Daley.

### **Holder's evidence**

25. The holder's evidence comes from Mr Kong Chee Min, the Chief Executive Officer of Centurion Corporation Limited since 1 August 2011. It is dated 16 May 2018.

26. Centurion Corporation Limited owns and operates workers and student accommodation and a storage disc manufacturing business. Its business in student accommodation began in 2014 and comprises properties in the UK, Australia and Singapore which are managed under the **dwell** brand. The brand was officially launched in the UK on 22 February 2017.<sup>3</sup>
27. The holder has eight premises in the UK:<sup>4</sup>

Location	Property Name	Number of Students
Manchester	Manchester Student Village	1,017
	Manchester Student Village South	355
	The Grafton	145
	Weston Court	140
	Beechwood House	55
Liverpool	Cathedral Campus	384
Bristol	Hotwells House	157
Newcastle	Garth Heads	181

The holder states that its occupancy rate for the year 2017/18 was 96%.

28. The remainder of the evidence is directed towards addressing points in the opponent's evidence. It includes press articles with comments highlighting customers' anger at Dwell Retail's actions around the time of its going into administration. I shall not summarise this evidence here but refer to it where appropriate during the rest of my decision.

***Opponent's evidence in reply***

29. The opponent responded to the holder's evidence in the form of a witness statement from Ms Charlotte Elizabeth Hilton, a solicitor and associate at the

---

<sup>3</sup> Exhibit KCM1. The witness statement gives the date as 22 February 2018, but the contents of the Exhibit have 22 February 2017.

<sup>4</sup> Exhibit KCM2.

opponent's representative, Fieldfisher LLP. Her witness statement is dated 26 October 2018. Attached to it are further press articles relating to the administration of Dwell Retail.

## **DECISION**

### **Section 5(2)(a) and (b) grounds**

#### **Legislation**

30. Section 5(2) of the Act states that:

“A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the trade mark is protected; or

(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.”

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

“In this Act an ‘earlier trade mark’ means –

(a) a registered trade mark, international trade mark (UK) or Community 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.”

32. Section 6A of the Act states that:

“(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 period of five years ending with the date of the publication.

(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 period of five years ending with the date of publication of the application 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 differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, 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.

(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.”

### **Proof of Use**

33. The case law on genuine use was summarised by Arnold J in *Walton International Limited v Verweij Fashion BV* [2018] EWHC 1608 (Ch):

“114. *The law with respect to genuine use.* The CJEU 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 [132].”

34. The onus is on the opponent, as the proprietor of the earlier mark, to show use. Section 100 of the Act states that:

“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.”

35. In its skeleton argument, the holder accepted that the opponent had demonstrated proof of use of its marks for *furniture, home accessories and retail services connected with such goods*. At the hearing, Ms Blythe submitted that *home accessories* should not be interpreted too broadly and clarified that the holder accepted use had been shown for the goods illustrated in the opponent’s evidence bundle and retail services connected with those goods. Ms Blythe specifically stated that the holder did not accept that evidence had been shown for cooking apparatus and pots.

36. The list of goods and services covered by the opponent’s earlier marks is extremely long and varied. I am required to arrive at a fair specification for those earlier marks subject to the proof of use requirements. In making this assessment, I bear in mind the comments of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10:

“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.”

37. Guidance on carrying out this exercise was given by Carr J in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch):

“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].

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.”

38. The evidence contains examples of items of furniture that are used in different rooms within a house, so, in my view, the average consumer would describe the goods using the relatively broad term *furniture*, rather than listing specific items or their purpose. The fact that the opponent has not provided evidence of the sale of, for example, wardrobes does not, according to the authorities quoted above, preclude the finding that I make, that the opponent’s marks have been used for furniture and the retail of furniture.
39. There are far fewer examples of other goods. The ones presented to me are as follows: lighting, mirrors, cushions, artworks, rugs, umbrella stands, toothbrush holders, soap dispensers, and cups. It seems to me that the term *home accessories* is too broad and that the average consumer would take it to mean the goods one buys for the home that have a decorative or functional purpose (such as storage) but that tend to be smaller than items of furniture. In the case of lighting, mirrors, cushions, paintings (pictures) framed and unframed, vases and umbrella stands I find that there is sufficient evidence that the marks have been used in connection with these goods.<sup>5</sup> The evidence for the other goods I have mentioned consists of magazine extracts.<sup>6</sup> As there is only one example

---

<sup>5</sup> Lighting, mirrors, paintings, vases and rugs are shown in the catalogue in Exhibit AA5, on the website (Exhibit AA4) and in the adverts (Exhibits AA12 and AA13). There is an invoice for sale of an umbrella stand in Exhibit AA10.

<sup>6</sup> Exhibit AA15.

of each of these products and no evidence of actual sales, I am unable to find that there has been sufficient use. That said, for the purposes of section 5(2), nothing turns on this, as toothbrush holders, soap dispensers and cups, along with many other goods and services, are covered by the 041 mark, for which proof of use is not required and on which the opponent may therefore rely. It may also rely on the goods covered by the 692 mark.

40. A full list of the goods and services the opponent may rely on under these grounds can be found in Annex B to this decision.

### **Principles to be applied**

41. In considering the opposition under this section, I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (CJEU) in *SABEL BV v Puma AG* (C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (C-120/04), *Shaker di L Laudato & C. Sas v OHIM* (C-334/05 P) and *Bimbo SA v OHIM* (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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings 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 and services

42. When comparing the goods and services, all relevant factors should be taken into account, per *Canon Kabushiki Kaisha*:

“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.”<sup>7</sup>

43. A further factor to be considered is the channels of trade of the respective goods and services: see the guidance given by Jacob J (as he was then) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281.
44. In his skeleton argument, Mr Cassidy identified the goods and services that he considered to represent the opponent’s best case. The table below shows these goods and services alongside the holder’s services.

Opponent’s goods and services	Holder’s services
<p><u>Class 20</u>  <i>Furniture, mirrors; mattresses; stools; chairs; cushions; magazine racks; tables; storage boxes; shelves; storage units; umbrella stands; sofas; beds; armchairs; chests of drawers; sideboards; shelving units.</i></p>	<p><u>Class 36 (all marks)</u>  <i>Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real units.</i></p>

<sup>7</sup> Paragraph 23



Opponent's goods and services	Holder's services
<p><u>Class 35</u> Retail services connected with furniture, furnishings, household articles, rugs; retail services connected with furniture, furnishings, household articles and rugs provided via a mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid services; the bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a furniture or furnishings store or from a store specialising in the sale of household articles or from a furniture, household articles and furnishings mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid.</p> <p><u>Class 39</u> Packaging and storage of goods; rental of vehicle roof racks; freight forwarding of goods; delivery of goods; delivery of goods by mail order; transport of goods by road, by railway, by boat and airplanes; storage of furniture, household articles and offices requisites; delivery of furniture, furnishings, articles for interior decoration</p>	<p>estate investment management; and property portfolio management.</p> <p><u>Class 43 (DWELL STUDENT and DWELL)</u> Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</p> <p><u>Class 43 (DWELL STUDENT LIVING)</u> Accommodation bureaux (boarding houses); agency services for the reservation of temporary accommodation; arranging of temporary accommodation; arranging of meals; boarding houses; boarding house bookings; cafeteria services; canteen services; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing food and drink, and temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</p>

Opponent's goods and services	Holder's services
<p><i>and for home; advisory, consultancy and information services relating to all the aforesaid.</i></p> <p><u>Class 42</u></p> <p><i>Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles; packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines and catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information services relating to all the aforesaid.</i></p> <p><u>Class 43</u></p> <p><i>Services for providing food and drink; restaurant, bar and cafeteria services; catering services; public house services; advisory, consultancy and information services relating to all the aforesaid.</i></p>	

It seems to me that – with one exception that I will come to in due course – the remaining goods and services do not give the opponent any stronger a case than the ones Mr Cassidy has identified.

45. In making my comparison, I take account of the comments of Floyd J (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

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

46. As the holder’s specification concerns services, I note also the comments of Arnold J in *Fil Limited and another v Fidelis Underwriting Limited and others* [2018] EWHC 1097 (Pat):

“... terms in specifications of goods and services should be given their ordinary and natural meaning, but this is subject to two overlapping qualifications: first, specifications of services are inherently less precise than specifications of goods, and therefore should be interpreted in a manner which confines them to the core of the ordinary and natural meaning rather than more broadly; and secondly, terms should not be interpreted so liberally that they become unclear and imprecise.”<sup>8</sup>

#### *Holder’s Class 36 services*

47. The holder’s *Real estate affairs* is a broad term and the ordinary and natural meaning of the term would encompass those activities involved with building and maintaining a portfolio of real estate, including as an investment, such as

---

<sup>8</sup> Paragraph 86.

the holder's *Management of real estate, apartments and buildings; Real estate investment; Real estate investment management; and Property portfolio management*. The opponent submits that its homeware goods, such as furniture, are similar or complementary, as these goods are "a necessary requirement to any piece of real estate and/or accommodation". Furniture and accessories such as rugs and mirrors will undoubtedly be used in real estate, but this is not, in itself, enough to find similarity. The nature of the goods and services is different, as are the uses. There may be some overlap in the users. They are not in competition and the trade channels are different.

48. The opponent submits that "To the extent that they are not similar they are complementary". In *LUV/LOVE TRADE MARKS*, BL O/255/13; complementarity was helpfully discussed by Mr Daniel Alexander QC, sitting as the Appointed Person. He said that:

"... the concept of complementarity is itself not without difficulty ... the purpose of the test, taken as a whole, is to determine similarity of the respective goods in the specific context of trade mark law. It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes."<sup>9</sup>

Mr Alexander referred to *Boston Scientific Ltd v OHIM*, T-325/06, where, on the particular facts of the case, the goods at issue were found to be to some extent complementary as they were used together for a specific medical procedure.

49. More recently, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *Energy Beverages LLC v Gogu Marin*, BL O/074/19, said:

"There is 'complementarity' when the goods or services at issue are closely connected in the sense that one is indispensable or important

---

<sup>9</sup> Paragraph 28.

for the use of the other, in such a way that consumers may think that the same undertaking is responsible for manufacturing those goods or providing those services. A finding of no similarity may legitimately be made, despite the existence of a degree of complementarity, if that complementarity is not sufficiently pronounced for it to be accepted that from the consumer's point of view the goods are similar within the terms of section 5(2)(b)."

50. In my view, the average consumer would not think that the same undertaking that makes furniture is also responsible for real estate management or investment. Nor do I think it more likely that the average consumer will think the same undertaking provides real estate and design services. Both are likely to be provided by specialists. Consequently, I find that the following services from the holder's specifications are different from the goods or services of the opponent: *Management of real estate, apartments and buildings; real estate affairs; real estate investment; real estate investment management; and property portfolio management*. The same arguments apply in the case of *renting or leasing of apartments, accommodation and real estate*.
51. I turn now to *accommodation bureaux (apartments)*. An accommodation bureau is a business which finds accommodation for its clients or finds tenants for landlords, whether on a short- or long-term basis. Essentially, they are facilitating the provision of accommodation to those who want to occupy it. This is a different purpose from those of the goods or services covered by the opponent's marks. There will be some overlap in users, but accommodation bureaux are not in competition with any of the opponent's services. I find that *accommodation bureaux (apartments)* are different from the opponent's services.

#### *Holder's Class 43 services*

52. I can deal with *cafeteria services* relatively quickly. The opponent's 041 mark, which, it will be recalled, was not subject to the proof of use test, also covers the identical *cafeteria services*.

53. The holder's *canteen services* are encompassed by the opponent's *Services for providing food and drink*. These can be considered identical according to the principle set out by the General Court in *Gérard Meric v OHIM*, T-133/05:

“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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”<sup>10</sup>

54. The holder's *Providing information, including online, about services for providing food and drink* is evidently identical to the opponent's *Advisory, consultancy and information services relating to services for providing food and drink* (my emphasis).

55. The natural and core meaning of the holder's *arranging of meals* is not the provision of the meals themselves, but the organisational aspects, such as booking tables at restaurants, planning menus or hiring caterers. The purpose is somewhat similar to the purpose of the opponent's *services for providing food and drink*. The opponent's services will enable the users to eat, without having to prepare the food themselves, while the holder's services make the process more straightforward for the users. In this case, there is, to my mind, complementarity in that the average consumer could well believe that the same undertaking provides both services. As a result, I find that these services are similar.

56. I will now consider the holder's *Boarding houses and provision of temporary accommodation*, the latter encompassing the former. I have already referred to the opponent's submissions that there is a similarity between the holder's

---

<sup>10</sup> Paragraph 29.

accommodation-related services and the opponent's *furniture*, but I found this argument unpersuasive.

57. The opponent did, however, pursue another line of argument. It submits that *provision of temporary accommodation* is similar to *public house services*, which are protected by the 041 mark, which is not subject to the proof of use test. There will be some overlap in the users of both services, but their purposes are different. The average consumer will understand *public house services* to refer to an establishment whose primary purpose is serving drinks. Food and entertainment may also be provided, but these are not always on offer. The trade channels of both services will overlap. It is not uncommon for public houses also to provide rooms for short lets.
58. In his skeleton, Mr Cassidy referred me to two decisions which, he submits, support the view that *public house services* and *provision of temporary accommodation* are complementary: *Excellent Brands JMI Ltd v Poetryinwater Ltd*, (Opp No B 2 288 341) and *Charles Wells Limited v Zeloof LLP*, BL O/416/11. I accept that, based on their knowledge of practices within the sector, the average consumer may well believe that both services are provided by the same, or connected, undertakings, and that consequently there is a degree of complementarity, but at a fairly low level. The average consumer would not expect a public house always to provide temporary accommodation. Neither service is indispensable for the use of the other. Looking at all the relevant factors as a whole, I consider that the similarity between these services is relatively low. The same analysis applies, to my mind, to *boarding houses*, which are simply a form of temporary accommodation.
59. Based on the same reasoning, I consider that there is a low degree of similarity between the holder's *Providing information, including online, about services for providing temporary accommodation* and the opponent's *Information services relating to public house services*.
60. The holder's *Accommodation bureaux (boarding houses), agency services for the reservation of accommodation, arranging of temporary accommodation*,

*boarding house bookings* and *temporary accommodation reservations* are all services which bring providers of temporary accommodation together with people who want somewhere to stay. I found that there was a relatively low degree of similarity between the temporary accommodation services I considered in paragraphs 57 and 58 and *public house services*. As I have accepted there was some degree of complementarity, and a relatively low degree of similarity, between these services, it seems to me that there would also be a very low degree of similarity between the agency and booking services and *public house services*. These are a step removed the service of providing the accommodation itself. It is possible that an arranger of temporary accommodation might be connected to a public house company, but I would not expect this to be a common occurrence.

61. I now turn to the holder's *Consultancy and advisory services relating to the provision of temporary accommodation*. These could be directed towards the person who is looking for somewhere to stay, but in my view it is more likely that the user will be a professional person or business that is either a provider of such accommodation or an organisation, like a university, that wishes to procure such accommodation. There is some overlap with *public houses* and *information services relating to public houses*, based on the findings I have already made. However, the consultancy and advisory services are further from the provision of the actual accommodation, and so any similarity is at a very low level.
62. The final service to be considered is the *Rental of cooking apparatus*. In my view, the nearest comparison to this service can be found in the specification of the 041 mark, rather than Mr Cassidy's table, which compares these services to *Services for providing food and drink*. There may be some overlap in users between rental of cooking apparatus and services for providing food and drink, but to my mind a closer comparison is the opponent's goods in Class 11: *Apparatus for ... cooking*. The nature of the goods and services is not identical: the opponent's goods are the physical objects (cookers, ovens, hobs, and the like), while the holder's mark covers the service of renting those physical objects. The purpose of both is to enable the user to prepare something to eat.



A user can choose between purchasing the equipment or hiring it, so they are in competition with each other. The channels of trade may, in some cases, be similar. It would be plausible for a supplier of cooking apparatus to businesses to offer the goods either for sale or rental. There is also a degree of complementarity: the service of *rental of cooking apparatus* requires some cooking apparatus to rent. The goods are indispensable for performance of the service, in the same way as chickens are indispensable for the service of transporting chickens (*Sanco SA v OHIM*, T-249/11, paragraph 52). While the average consumer may not expect retailers that target the general public to offer rental services as well, it is more likely to occur in the sector of the market which focuses on business customers. Bearing all these factors in mind, I find that there is a medium degree of similarity between *Rental of cooking apparatus* and *Apparatus for ... cooking*.

### Summary of Comparison

63. The table below summarises my findings of similarity:

<p><b>Identical:</b></p> <p><i>Cafeteria services; canteen services; providing information, including online, about services for providing food and drink.</i></p>
<p><b>Similar:</b></p> <p><i>Arranging of meals; Rental of cooking apparatus.</i></p>
<p><b>Low degree of similarity:</b></p> <p><i>Boarding houses; providing information, including online, about services for providing temporary accommodation; provision of temporary accommodation.</i></p>
<p><b>Very low degree of similarity:</b></p> <p><i>Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; Temporary accommodation reservations.</i></p>

64. I found the following services to be different from goods or services protected by the opponent's marks: *Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; property portfolio management.* For a section 5(2) claim, some similarity of goods and services is required: see *Waterford Wedgwood plc v OHIM*, C-398/07 P. The section 5(2)(a) and (b) grounds fail for these services.

### **Average consumer and the purchasing act**

65. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, I must bear in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: see *Lloyd Schuhfabrik Meyer*.

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

“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.”<sup>11</sup>

67. The opponent submits that the goods and services at issue

---

<sup>11</sup> Paragraph 60.

“... are commonplace everyday goods and services consumed by a wide range of people within the United Kingdom. Consumers are therefore likely to pay a low to average level of attention when purchasing them. The average consumer is therefore the general public paying a low to average level of attention.”

68. The holder agrees that the average consumer will be a member of the general public, but disagrees as to the level of attention that will be paid when purchasing the goods and services, particularly when those services relate to accommodation:

“However, it is emphasised that in respect of the Contested Services, the average consumer can be expected to exercise a high degree of care and attention as the services relate to where they will live and therefore impact upon their general well-being, safety and comfort.”

69. The average consumer of temporary accommodation services, public house services, apparatus for cooking, and cafeteria-type services will be a member of the general public. Businesses will also purchase accommodation services, for example for staff who need to travel on business, and apparatus for cooking, particularly if they are restaurants or cafeterias. In my view, it is a business who would be the average consumer of rental of cooking apparatus, as the general public would more commonly purchase these goods. When making these decisions, businesses would be paying at least an average degree of attention.
70. At the hearing, Mr Cassidy explained that he thought students would pay a below average level of attention to where they were going to live. However, the holder’s specification does not just contain “student accommodation”, but “temporary accommodation” more generally. I must take account of notional and fair use of the mark for the goods and/or services specified. I accept that the average consumer of temporary accommodation is unlikely to pay the same degree of attention as they would if they were choosing a permanent place of residence, but it seems to me that the level of attention would still be above average, even in the case of students. The facilities on offer, the size of the


accommodation, and its location would all have an impact on the resident's quality of life. The purchasing decision would be made with the assistance of websites, online and printed guides, adverts and other promotional material. Consequently, I find that the visual element will be most significant.

71. In the case of public house and cafeteria-type services, the visual element will again be most significant in deciding which establishment to go to. The average consumer may use guides or reviews, either in print or online, see adverts, or be attracted by signage in the street. Word-of-mouth recommendation will also play a role, so the aural element must also be considered. In my view, the average consumer will pay an average level of attention during the purchasing decision. They will want to be sure that the establishment provides the type of food and/or drink that they enjoy, and that the atmosphere suits their mood.
72. Cooking apparatus is not an inexpensive, everyday item. The average consumer will have a set of requirements relating to size and features that they want to use. The same will apply in the case of rental of cooking apparatus. The average consumer will see the goods in a store or online, use catalogues or comparison guides. They will also come across adverts or other promotional material about the goods or for rental services. I find that the average consumer will be paying an average level of attention in the purchasing process.

### **Comparison of marks**

73. From this point and for the section 5(2) grounds only, I will confine my comparison to the opponent's 041 mark, as this mark, which was not subject to proof of use, protects all the goods and services I found to be similar. The goods and services covered by the 083 mark ("DWELL LIVE LIKE THIS") and for which use has been shown are confined to *furniture, paintings (pictures) framed or unframed, cushions, mirrors, rugs and the retail of these goods*. Earlier in this decision (paragraph 50), I found that *furniture* was different from the holder's services. The other goods I have listed, and retail services connected with them, are also different on the same rationale. Where there is no similarity of goods and services, there cannot be confusion under section 5(2) of the Act.

74. 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.
75. It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.
76. The holder accepts that its word mark “DWELL” (IR1336257) is identical to the opponent’s DWELL word marks. It also accepts that its other marks are similar to the opponent’s marks.
77. These other marks are shown below:

Earlier mark (041 mark)	Contested marks
DWELL	DWELL STUDENT
	

78. The opponent's 041 mark is the word "DWELL", presented in a standard font with no stylisation and in capital letters.<sup>12</sup> The overall impression of the mark lies in the word itself.
79. The first of the holder's marks consists of two words DWELL and STUDENT presented in a standard font, with no stylisation and in capital letters. The opponent submits that the word "DWELL" is the dominant component "not least because it is the only distinctive and non-descriptive word element of the sign". The phrase naturally falls into two units of one word each and, in my view, the average consumer is more likely to see the first word as the dominant and distinctive element, with "STUDENT" describing the target market.
80. The second of the holder's marks consists of the word DWELL in a slightly stylised font and in lower case. The word is printed in white on an irregularly shaped dark circle. The mark is presented in black and white, and no colour is claimed. To the right-hand side of the shape is the phrase "Student Living", in a standard font and with the first letters of each word in upper case. These words contribute to the overall impression, but only in a minor way as they are descriptive of the services provided by the holder under the mark. The irregular circle will, in my view, also play a role, but not a particularly significant one. The dominant and distinctive element of this mark is the word "DWELL".

### *Visual comparison*

81. The holder's DWELL STUDENT mark consists of two words, of 5 and 7 letters. The first of these words – the distinctive and dominant component of the mark – is identical to the opponent's 041 mark. Both are word marks with no figurative element or stylisation. I find that there is a high level of visual similarity between the opponent's and the holder's marks.

---

<sup>12</sup> Registration of a trade mark in capital letters covers use in lower case, as stated by Professor Ruth Annand, sitting as the Appointed Person, in *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17.

82. The holder's device mark is as I have described in paragraph 80. It contains the word that makes up the opponent's 041 mark with some stylisation and, as I have already noted, an irregular black device and the additional words "Student Living" in smaller, standard font. The white lettering on a dark background stands out and gives prominence to the word DWELL, but the stylisation of these letters is fairly minimal. I find there is a high level of visual similarity between this mark and the opponent's 041 mark.

*Aural comparison*

83. The opponent submits that aurally the marks are "highly similar if not identical". It is the case that all the marks begin with an identical one-syllable word, which will be pronounced in the same way, as written. The degree of aural similarity depends on whether the average consumer is likely to articulate the holder's marks as whole phrases: DWELL STUDENT and DWELL STUDENT LIVING. In these marks, "STUDENT" and "STUDENT LIVING" are descriptive of target market for the relevant services and the purpose of the services respectively. Consequently, in my view the average consumer is likely only to use the word "DWELL" when articulating the marks, and the marks would be aurally identical. If I am wrong in this, the marks would have no more than a medium degree of similarity, given the differences in length.

*Conceptual comparison*

84. The opponent submits that:

"Conceptually, the Signs and the Opponent's Trade Marks are identical (if not highly similar), due to the identical use of the word DWELL. The other non-dominant elements of the later signs do not create any conceptual dissimilarity between the marks."

85. The holder, on the other hand, submits that the marks are conceptually different. It notes that the definition of "DWELL" is "to live in" but goes on to submit that the overall meaning of the marks is changed to mean "to live as a

student” or “student living”. In my view, this is not so much a change in, but a narrowing down of, the meaning. The idea of living somewhere remains, but it is applied to a specific group of people. Furthermore, the distinctive and dominant element of the holder’s mark is conceptually identical. I find that there is a high degree of conceptual similarity.

86. Turning to the device mark, the holder submits that:

“... the logo mark with its uneven sphere represents an organically-formed cocoon, which symbolises a comfortable, safe and natural living environment.”

In my view, the average consumer will not read this, or any, meaning into the shape, but instead see it as decoration. This mark also to my mind has a high degree of conceptual similarity with the opponent’s 041 mark.

### **Distinctiveness of the earlier mark**

87. There is, as has already been noted, a greater likelihood of confusion if the earlier mark is highly distinctive. The CJEU provided guidance on assessing a mark’s distinctive character in *Lloyd Schuhfabrik Meyer*:

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it



does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

88. The opponent submits that its marks enjoy enhanced distinctiveness and that the holder has accepted that the marks are distinctive. In its written submissions, the holder states that:

“The name DWELL was chosen for the Applicant’s welcoming, thoughtful and supportive student living solution to be unique and distinctive and to reflect what the Applicant stands for as a brand.”

89. The holder submits that the earlier marks have a low level of inherent distinctiveness, as the word “DWELL” is allusive of the goods and services provided by the opponent: “it alludes to the intended purpose of the goods, being to enable a person to live in a home in comfort”. It continues:

“Further, to the extent that the Opponent has enhanced the distinctiveness of the Earlier Marks through use, that enhanced distinctiveness exists solely in relation to furniture, home accessories and the retail thereof, which are poles apart from the Contested Services.

Moreover, given the allusive nature of the word DWELL, it is submitted that the average consumer will not attribute any similarity between the respective marks to a common origin, but will instead take only therefrom that both brands offer goods or services that relate to improving the circumstances in which a customer lives.”

90. The word DWELL is not particularly allusive for the goods and services that are similar to the holder's services: *cafeteria services, services for providing food and drink, information services relating to services for providing food and drink, public house services, information services relating to public house services, apparatus for cooking*.. It is, however, a common dictionary word. Consequently, I find that the 041 mark has a medium level of inherent distinctiveness in respect of these services.
91. In support of its claim to enhanced distinctiveness in the marks, the opponent has submitted evidence of the turnover and marketing spend of Dwell Retail, together with information on the number of contacts on its customer database. However, there is no evidence that the opponent has used the mark in connection with the goods and services found to be similar under the section 5(2) grounds.

### **Conclusions on likelihood of confusion**

92. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred in paragraph 41. I am required also to have regard to the interdependency principle, that a lesser degree of similarity between the goods/services may be offset by a greater degree of similarity between the marks, and vice versa.<sup>13</sup> The distinctiveness of the earlier mark must also be taken into account.
93. Such a global assessment does not imply an arithmetical exercise, where each factor is given a score and the result of a calculation reveals whether or not there is a likelihood of confusion. I must keep in mind the average consumer of the goods and/or services and the nature of the purchasing process. I note that it is generally accepted that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture they have kept in their mind.<sup>14</sup>

---

<sup>13</sup> *Canon Kabushiki Kaisa*, paragraph 17.

<sup>14</sup> *Lloyd Schuhfabrik Meyer*, paragraph 27.

94. There are two types of confusion: direct and indirect. These were explained by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10:

“Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.’<sup>15</sup>

95. In her skeleton argument, Ms Blythe submits that the absence of actual confusion is significant:

“The Applicant has ... been trading under the DWELL brand alongside the Opponent’s DWELL furniture and home accessories business for around 2 years, and even in the same cities as the Opponent’s stores... There has therefore been substantial opportunity for any actual confusion to occur and come to light.

It is submitted that this is powerful evidence that there is no likelihood of confusion between the Contested Marks and the Earlier Marks, at least in respect of student accommodation services and the like.”

---

<sup>15</sup> Paragraph 16.

96. In making these submissions, Ms Blythe quotes the decision of Kitchen LJ in *Roger Maier and Another v ASOS* [2015] EWCA Civ 220:

“If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”<sup>16</sup>

97. It is not, however, furniture or home accessories with which the holder’s services are being compared here, but the services I listed in paragraph 90 above, all of which are covered by the 041 mark not subject to proof of use. Earlier in the same decision, Kitchen LJ stated that:

“... the court must ... consider a notional and fair use of that mark in relation to all of the goods or services in respect of which it is registered. Of course it may have become more distinctive as a result of the use which has been made of it. If so, that is a matter to be taken into account for, as the Court of Justice reiterated in *Canon* at paragraph [18], the more distinctive the earlier mark, the greater the risk of confusion. But it may not have been used at all, or it may only have been used in relation to some of the goods or services falling within the specification, and such use may have been on a small scale. In such a case the proprietor is still entitled to protection against the

---

<sup>16</sup> Paragraph 80.

use of a similar sign in relation to similar goods if the use is such as to give rise to a likelihood of confusion.”<sup>17</sup>

Consequently, I find that the absence of evidence of actual confusion is not significant in this instance.

**Section 5(2)(a)**

98. I shall deal first with the claim under section 5(2)(a). The holder’s DWELL mark (IR1336257) is identical to the opponent’s earlier 041 mark. Having already found that the Class 36 services are different from the opponent’s goods and services, I must concern myself with the Class 43 services.
99. I found that there was a medium degree of similarity between *Rental of cooking apparatus* and *Apparatus for cooking* and that the 041 mark had a medium level of distinctiveness for these goods and services. The average consumer would be paying a medium level of attentiveness during a primarily visual purchasing process, and would, in my view, be likely to assume that the same company was involved in both the sale and the rental of cooking apparatus. Consequently, I find that there is a likelihood of confusion here.
100. I will now consider the following services: *boarding houses; provision of temporary accommodation*. I found these services to have a low level of similarity to the opponent’s *public house services*. When the average consumer (even if they are a student) is considering a place to stay, they will be paying an above average level of attention. Such a decision can, as I have already noted, have a significant impact on the consumer’s quality of life. Nevertheless, the identity of the mark, the finding that some public houses do provide temporary accommodation and the operation of the independency principle lead me to find that there is a likelihood of confusion in the case of these services.

---

<sup>17</sup> Paragraph 78.

101. I found that there was also a low level of similarity between the holder's *Providing information, including online, about services for providing temporary accommodation* and the opponent's *Information services relating to public houses*, and for the same reasons that I have outlined in the previous paragraph, I find the average consumer is likely to be confused.
102. Despite a lower degree of similarity between the opponent's *public house services* and the holder's *Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; temporary accommodation reservations*, the identity of the marks and the average consumer's awareness that some public houses offer temporary accommodation are likely to lead the average consumer into confusion.

***Outcome of the section 5(2)(a) ground***

103. Subject to the comments in paragraphs 149 to 151 below, the opposition to IR1336257 under section 5(2)(a) succeeds in relation to the following services:

*Class 43*

*Accommodation bureau (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.*

104. The section 5(2)(a) ground fails with respect to the following services, which I found to be different from the goods and services of the opponent:

Class 36

*Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; real estate investment; real estate investment management; property portfolio management.*

**Section 5(2)(b)**

105. I turn now to the holder's remaining marks. I found both the DWELL STUDENT mark (IR1330134) and the device mark (IR1344000) to be visually and conceptually similar to a high degree, and aurally identical (or aurally similar to a medium degree), to the opponent's 041 mark. The visual element would be the most significant during the purchasing process.
106. I found that the dominant and distinctive element of both these marks is the word "DWELL". In the light of this finding, I would come to the same conclusion as I did for the section 5(2)(a) ground where IR1330134 and IR1344000 cover the same services as IR1336257. The specification of IR1330134 is identical to that of IR1336257; the additional services covered by IR 1344000 are as follows: *arranging of meals; cafeteria services; canteen services; providing information, including online, about services for providing food and drink.*
107. The holder has accepted that the *cafeteria services* covered by the device mark are identical to those of the opponent. I also found the holder's *canteen services* to be identical to the opponent's *Services for providing food and drink per Meric* and the holder's *providing information, including online, about services for providing food and drink* to be identical to the opponent's *advisory, consultancy and information services relating to services for providing food and drink*. Given this identity, the high degree of visual and conceptual similarity that I found, the medium level of distinctiveness of "DWELL" for these services, I find it likely that these marks will be confused.
108. I found the holder's remaining services (*arranging of meals*) similar to the opponent's *services for providing food and drink*. As I found the word "DWELL"

to be the distinctive and dominant element of the device mark, it is likely that the consumer will be confused and that the arrangement of meals is another service of the company that provides the food and drink.

***Outcome of Section 5(2)(b) ground***

109. Subject to the comments in paragraphs 149 to 151 below, the opposition against IR1330134 succeeds under section 5(2)(b) with respect to the following goods and services:

*Class 43*

*Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.*

110. The section 5(2)(b) ground fails with respect to the following goods and services:

*Class 36*

*Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; property portfolio management.*

111. Subject to the comments in paragraphs 149 to 151 below, the opposition against IR1344000 succeeds under section 5(2)(b) with respect to the following goods and services:



Class 43

*Accommodation bureaux (boarding houses); agency services for the reservation of temporary accommodation; arranging of temporary accommodation; arranging of meals; boarding houses; boarding house bookings; cafeteria services; canteen services; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing food and drink, and temporary accommodation; provision of temporary accommodation; temporary accommodation reservations.*

112. The section 5(2)(b) ground fails with respect to the following goods and services:

Class 36

*Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; property portfolio management.*

**Section 5(3) ground**

113. Section 5(3) of the Act states that a trade mark which 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 Community trade mark or international trade mark (EC), in the European Community) 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”.

114. The conditions of section 5(3) are cumulative:

- 1) The opponent must show that the earlier mark has a reputation.
- 2) The level of reputation and the similarities between the marks must be such as to cause the public to make a link between the marks.
- 3) One or more of three types of damage (unfair advantage, detriment to distinctive character or repute) will occur.

It is not necessary for the goods to be 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.

### ***Reputation***

115. The opponent submits that it has “a significant and extensive reputation within the furniture and retail sector and amongst the general public in the United Kingdom”. In his skeleton argument, Mr Cassidy submits that:

“This extensive reputation did not falter or diminish when Dwell Retail went into administration in 2013. On the contrary, the publicity surrounding the financial difficulties of the Dwell retail business (under the DWELL marks) clearly demonstrates how well known the mark is and was at the time, especially given how widely these difficulties were reported.”

116. The holder submits that the opponent’s evidence of reputation “leaves a lot to be desired” and that any reputation was so badly damaged in 2013 that prior trade “is largely irrelevant” and that press coverage of Dwell Retail going into administration does not shed any light on the opponent’s reputation in the following years.

117. The CJEU gave guidance on assessing reputation in *General Motors Corporation v Yplon SA*, C-375/97:

“24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector.

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.”

118. Earlier in the decision, I found that the opponent had shown genuine use of its marks in relation to furniture, selected home accessories<sup>18</sup> and the retail of these goods. The holder submits that the market share held by the opponent’s marks is small. In 2015, for example, the size of the furniture and furnishings market in the UK was £16.674bn.<sup>19</sup> Dwell Retail’s turnover at the time represents about 1% of that market.<sup>20</sup> These figures are, however, not directly comparable as the time periods differ: The market share data covers calendar years while the opponent’s financial year ends on 28 July.<sup>21</sup> Furthermore, I

---

<sup>18</sup> Lighting, mirrors, cushions, paintings (pictures) framed and unframed, vases, rugs and umbrella stands.

<sup>19</sup> See Exhibit KCM5.

<sup>20</sup> Turnover figures for Dwell Retail in paragraph 20.

<sup>21</sup> See Coin Furniture Annual Report and Accounts in Exhibit AA11.

have not been presented with figures for the size of the market in later years, when Dwell Retail's turnover increased.

119. Market share is not the only relevant factor here. The opponent has provided details of the location of its stores in Mr Ahmad's witness statement.<sup>22</sup> With outlets in London, Manchester, Lakeside Retail Park, Glasgow, Reading, Oxford, Slough, Chester, Liverpool, Preston and Bolton, these are spread throughout the UK. The opponent's evidence also includes examples of advertising in national publications<sup>23</sup> and details of the sums spent on marketing within the UK and the EU since 2008.<sup>24</sup> As an example, in the year ending July 2015 the opponent spent £1.596m, which works out as 9.5% of its turnover for the year. These figures indicate that the opponent was making a serious investment in promoting the marks.
120. The opponent's financial troubles were reported widely in UK national media such as the *Sunday Telegraph*, *Daily Telegraph*, *The Times*, *BBC News* and *Evening Standard*.<sup>25</sup> The opponent submits that "There is no requirement under 5(3) that a reputation imputes positive connotations." I agree: whether that reputation is positive, neutral or negative is significant when it comes to an assessment of heads of damage, rather than whether a reputation exists in the first place.
121. In his witness statement, Mr Ahmad states that:

"The original philosophy behind the DWELL brand was to design and sell furniture and accessories that combine modern, aspirational design with affordable pricing and this philosophy remained at the forefront of the DWELL brand's resurgence under Coin's management."

---

<sup>22</sup> Paragraph 30.

<sup>23</sup> Exhibits AA12 and AA13.

<sup>24</sup> See paragraph 18 above.

<sup>25</sup> Exhibit AA1.

A 2014 article from *Retail Week* quotes the DFS chief executive officer who described Dwell Retail as “a strong, contemporary brand” appealing to “younger, more urban consumers”.<sup>26</sup>

122. In all but one of the press articles submitted by the opponent, Dwell Retail is referred to as a furniture retailer. The adverts also highlight sofas, chairs, tables and storage.<sup>27</sup> I find that the opponent has shown that it has a moderate level of reputation in the UK in the 179 mark for furniture and furniture retailing.
123. For the purposes of the section 5(3) ground, the EU trade marks must have a reputation within a substantial part of the territory of the EU. In paragraph 21 above, I noted that the opponent had provided evidence of sales to customers in France, Spain, Ireland, Italy, the Netherlands and Germany, as well as the UK, and that Dwell Retail’s website attracted visitors from EU Member States other than the UK. Even if this evidence is not sufficient, I recall that the CJEU held that, subject to the facts of the case, this could mean a single Member State: see *Pago International GmbH v Tirolmilch registrierte GmbH*, C-301/07, paragraph 30. Bearing in mind the coverage and advertising within national media and the geographic spread of the stores, my view is that the UK constitutes a substantial part of the territory of the EU in the present case. I find that the 711 and 041 marks have a reputation in the EU for furniture and furniture retailing.
124. The 083 mark is used on the front of the catalogue and in adverts. There is no evidence to indicate that mark **DWELL LIVE LIKE THIS** is known by a significant proportion of the relevant public.

### **Link**

125. My assessment of whether the public will make the required mental link between the marks must take account of all relevant factors which were

---

<sup>26</sup> Exhibit AA7.

<sup>27</sup> See Exhibits AA12 and AA13.

identified by the CJEU in *Intel Corporation Inc v CPM United Kingdom Limited*, C-252/07:

- the degree of similarity between the conflicting marks;
- the nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public;
- the strength of the earlier mark's reputation;
- the degree of the earlier mark's distinctive character, whether inherent or acquired through use; and
- the existence of the likelihood of confusion on the part of the public.

#### *Similarity of the marks*

126. I have considered the similarity between the marks already in paragraphs 73 to 86 of this decision. While the holder's DWELL mark is identical to the opponent's DWELL word mark, I found the DWELL STUDENT and DWELL STUDENT LIVING marks to possess a high degree of visual and conceptual similarity to the opponent's mark. With regard to the aural similarity, I found that the marks were either identical (if DWELL were the only word spoken) or similar to a medium degree.

#### *Similarity of goods and services*

127. I bear in mind that the CJEU held in *Intra-Press SAS v OHIM*, Joined Cases C-581/13 P and C-582/13 P that the level of similarity required for the public to make a link between the marks for the purposes of section 5(3) may be less than the level of similarity required to create a likelihood of confusion under section 5(2). I found that the holder's Class 36 services were dissimilar to the

goods and services in the opponent's specification for the purposes of the section 5(2) grounds. I am required, however, to consider them under section 5(3). As the General Court said in *Puma SE v EUIPO*, T-62/16:

“The dissimilarity between the goods designated respectively by the marks at issue is therefore not a sufficient factor for excluding the existence of a link between those marks, bearing in mind also that the existence of such a link must be assessed globally, that is to say, by taking into account all of the relevant factors of the case.”<sup>28</sup>

128. In paragraphs 47 to 50, I found that these services were dissimilar to furniture. The table in paragraph 63 sets out the degrees of similarity that I found for the holder's Class 43 services.

*Existence of the likelihood of confusion on the part of the public*

129. I found there to be no likelihood of confusion in the case of the Class 36 services and a likelihood of confusion in the case of the Class 43 services. As I have already noted, though, the absence of confusion does not rule out the existence of a link under section 5(3).

*Strength of the earlier marks' reputation*

130. I consider that the opponent's reputation is, at most, moderate. While its relatively small market share does not preclude it from having a reputation, it will have an impact on that reputation's size.

*Degree of distinctive character of the earlier marks*

131. The earlier mark has a low degree of inherent distinctive character in relation to the goods and services for which it has a reputation. The word alludes to the goods sold, which are all items that would furnish a place in which one dwells

---

<sup>28</sup> Paragraph 100.

and make that place comfortable and pleasing to the person who lives there. The opponent claims that its marks enjoyed enhanced distinctiveness through use. The evidence shows use of the marks for furniture and retail of furniture, along with investment in promotion and coverage in the UK national media. I accept that in respect of these goods and services, the DWELL word marks' distinctiveness has been enhanced through use from a low to a medium level.

132. The holder also draws attention to the existence of at least one other trade mark in use on the market by an unconnected undertaking: DWELLSTUDIO.<sup>29</sup> In her skeleton argument, Ms Blythe notes that this mark is also used for furniture and home accessories and submits that:

“In such circumstances, the penumbra of protection afforded to the Earlier Marks should be considered to be relatively small. The average consumer is used to differentiating between various ‘DWELL’ marks, even within the furniture industry, such that differences between the other elements of the respective marks and differences between the goods/services provided under the marks, should be considered sufficient to differentiate them in the mind of the consumer.”

The opponent submits that the fact that no action has been taken against one particular mark is not in itself evidence that confusion or damage is less likely. I agree that I should not read too much into the fact that the opponent has not taken action against DWELLSTUDIO. There may be various different factors influencing this decision.

133. Taking all the factors into consideration, I find that the relevant public would not make a link between the holder's services and the goods for which the opponent's mark has a reputation. The opponent suggested that furniture may be purchased from hotels, but I have not been provided with evidence to suggest that this is a sufficiently common practice for the consumer to make a

---

<sup>29</sup> See Exhibit KCM6.



link between the opponent's goods and services and the holder's services related to accommodation or real estate.

134. If the public do not make a link between the marks, use of the holder's marks cannot take unfair advantage of the reputation acquired by the earlier marks, dilute their distinctiveness or tarnish the opponent's reputation. The opposition under section 5(3) therefore fails.

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

135. Section 5(4)(a) of the Act states that:

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

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

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of ‘an earlier right in relation to the trade mark’.

136. It is settled law that for a successful finding of passing off, three factors must be present: goodwill, misrepresentation and damage. Her Honour Judge Melissa Clarke, sitting as deputy Judge of the High Court, conveniently summarised the essential requirements of the law in *Jadebay Limited, Noa and Nani Limited Trading as the Discount Outlet v Clarke-Coles Limited Trading as Feel Good UK* [2017] EWHC 1400 IPEC:

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

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

### **Goodwill**

137. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates.”

138. The opponent claims to have goodwill attached to the signs **DWELL** and **DWELL LIVE LIKE THIS** in respect of the goods and services listed in paragraph 7. The holder submits that the opponent has not established goodwill, but, that if any goodwill does exist, “it exists only in relation to the sign

DWELL and only in respect of furniture, home accessories and retail services in relation thereto”.

139. There is no *de minimis* level of sales required to establish protectable goodwill (see *Stannard v Reay* [1967] FSR 140). In his witness statement, Mr Ahmad states that by May 2016 the opponent had 15 stores in the UK, and the evidence includes screenshots from the website dating from the relevant period and with prices in sterling.<sup>30</sup> The website screenshots also include the sign **DWELL LIVE LIKE THIS**. The turnover figures are not broken down by country, but I accept that there is sufficient evidence for me to find that the opponent has protectable goodwill in connection with both signs.

### ***Misrepresentation***

140. The relevant test was set out in *Neutrogena Corporation and another v Golden Limited and another* [1996] RPC 473 where Morritt LJ stated that:

“This is the proposition clearly expressed by the judge in the first passage from his judgment which I quoted earlier. There he explained that the test was whether a substantial number of the plaintiff’s customers or potential customers had been deceived for there to be a real effect on the plaintiff’s trade or goodwill.”

141. *Halsbury’s Laws of England* Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309, it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

---

<sup>30</sup> Exhibit AA4.

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be

shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

142. The opponent submits that

“... given the high degree of recognition in the minds of the public, and the widely held view that the marks DWELL and DWELL LIVE LIKE THIS are associated with the Opponent, use of the Signs will lead to commercial confusion and will deceive the average consumer into believing that the goods and services of the Applicant are from the Opponent or otherwise connected to, licensed or authorised by the Opponent.”

143. The holder, on the other hand, submits that

“... use of the Contested Marks would not amount to a misrepresentation to the public that the real estate services and the like of the Applicant are those of or related to the Opponent.”

144. As Morritt LJ said, a finding of misrepresentation depends on the opponent’s customers or potential customers being deceived. I also take account of the comments of Jacob LJ in *Phones 4u Ltd v Phone4u.co.uk Internet Ltd* [2006] EWCA Civ 244:

“16. ... Sometimes a distinction is drawn between ‘mere confusion’ which is not enough, and ‘deception’, which is. I described the difference as ‘elusive’ in *Reed Executive plc v Reed Business Information Ltd* [2004] RPC 40. I said this [111]:

‘Once the position strays into misleading a substantial number of people (going from “I wonder if there is a connection” to “I assume there is a connection”) there will be passing off, whether the use is as a business name or a trade mark on goods.’

17. This of course is a question of degree – there will be some mere wonderers and some assumers – there will normally (see below) be passing off if there is a substantial number of the latter even if there is also a substantial number of the former.

18. The current (2005) edition of Kerly contains a discussion of the distinction at paras 15-043 to 15-045. It is suggested that:

‘The real distinction between mere confusion and deception lies in their causative effects. Mere confusion has no causative effect (other than to confuse lawyers and their clients) whereas, if in answer to the question: “what moves the public to buy?”, the insignia complained of is identified, then it is a case of deception.’

19. Although correct as far as it goes, I do not endorse that as a complete statement of the position. Clearly if the public are induced to buy by mistaking the insignia of B for that which they know to be that of A, there is deception. But there are other cases too – for instance those in the *Buttercup* case. A more complete test would be whether what is said to be deception rather than mere confusion is really likely to be damaging to the claimant’s goodwill or divert trade from him. I emphasise the word ‘really’.”

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

“There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff’s business. The expression ‘common field of activity’ was coined by Wynn-Parry J in *McCulloch v May* (1948) 65 RPC 58, when he dismissed the plaintiff’s

claim for want of this factor. This was contrary to numerous previous authorities (see, for example, *Eastman Photographic Materials Co Ltd v John Griffiths Cycle Corporation Ltd* (1898) 15 RPC 105 (cameras and bicycles); *Walter v Ashton* [1902] 2 Ch. 282 (The Times newspaper and bicycles) and is now discredited. In the *Advocaat* case Lord Diplock expressly recognised that an action for passing off would lie although ‘the plaintiff and the defendant were not competing traders in the same line of business’. In the *Lego* case Falconer J acted on evidence that the public had been deceived into thinking that the plaintiffs, who were manufacturers of plastic toy construction kits, had diversified into the manufacture of plastic irrigation equipment for the domestic garden. What the plaintiff in an action for passing off must prove is not the existence of a common field of activity but likely confusion among the common customers of the parties.

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

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

*Annabel’s (Berkeley Square) Ltd v G Schock (trading as Annabel’s Escort Agency)* [1972] RPC 838 at page 844 per Russell LJ.

In the *Lego* case Falconer J likewise held that the proximity of the defendant’s field of activity to that of the plaintiff was a factor to be taken into account when deciding whether the defendant’s conduct would cause the necessary confusion.

Where the plaintiff’s business name is a household name the degree of overlap between the fields of activity of the parties’ respective

businesses may often be a less important consideration in assessing whether there is likely to be confusion, but in my opinion it is always a relevant factor to be taken into account.

Where there is no or only a tenuous degree of overlap between the parties' respective fields of activity the burden of proving the likelihood of confusion and resulting damage is a heavy one. In *Stringfellow v McCain Foods (GB) Ltd* [1984] RPC 501 Slade LJ said (at page 535) that the further removed from one another the respective field of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that

'even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to show that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.'

In the same case Stephenson LJ said at page 547:

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



property in their goodwill, which must, as Lord Fraser said in the Advocaat case, be substantial.”

146. While I found there to be protectable goodwill, the fairly small market share and the allusive nature of the word “DWEEL” for the goods and services at issue under this ground lead me to find that it is unlikely that a substantial number of the public would assume that the undertaking providing real estate services or temporary accommodation was the same as, or connected to, the opponent’s Dwell Retail business.
147. The section 5(4)(a) ground fails.

## Conclusion

148. Subject to the comments in paragraphs 149 to 151, the oppositions have been partially successful and the UK designation by Centurion Corporation may proceed to registration in respect of the following services:

<b>Mark</b>	<b>Services</b>
IR1330134	<u>Class 36</u> Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.
IR1336257	<u>Class 36</u> Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; real estate investment; real estate investment management; and property portfolio management.

IR1344000	<u>Class 36</u> Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.
-----------	---

### Revised specification

149. In the above conclusions, I have upheld the opposition against the following services – *accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; provision of temporary accommodation; temporary accommodation reservations* – on the basis of similarity to *public house services*. However, if the terms were to be limited then it may be possible to register the marks for student accommodation as a distinct category. Such accommodation tends to be reserved for periods of at least one academic year, making it different in character from the type of short-term accommodation offered by some public houses, which will more normally provide rooms for a few nights. Student accommodation will also provide a wider range of facilities than a public house or a hotel, such as kitchens and laundry rooms for the occupants to use.
150. In view of this, Centurion Corporation is permitted 14 days to put forward any revised terms that:
- (a) fall within the ambit of the services listed in the previous paragraph; and
  - (b) are distinguishable from terms describing the more general temporary accommodation services, such as those provided by some public houses.

151. Coin Furniture will be allowed 14 days to comment on any proposed terms and I will then issue a supplementary decision in which I will decide whether any proposed terms are free from objection. If Centurion puts forward no revised terms then I will issue a supplementary decision confirming the outcome as it stands in paragraph 148 above. In the supplementary decision, I will also issue my decision on costs. The appeal period for the substantive and supplementary decisions will run from the date of the supplementary decision.

**Dated 9 April 2019**

**Clare Boucher  
For the Registrar,  
Comptroller-General**

## Annex A

Trade Mark	Goods and Services
<p>EUTM 9534711</p> <p>DWELL</p>	<p><u>Class 18</u></p> <p><i>Leather and imitations of leather, and goods made of these materials, not included in other classes; animal skins, hides; trunks and travelling bags; purses; wallets; umbrellas, parasols and walking sticks; briefcases; handbags; shopping bags; suitcases; vanity cases, not fitted; leather trimmings for furniture; parts and fittings for all the aforesaid goods.</i></p> <p><u>Class 20</u></p> <p><i>Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics; mattresses; stools; chairs; ornaments made of wood, wax, plaster or plastic; cushions; wine racks; trays and bin; magazine racks; wine cases; tables; storage boxes; bathroom furniture and bathroom cabinets; shelves; storage units; hooks; curtain rings, tracks and poles; baskets; window boxes made of plastic and wood; umbrella stands; sofas; beds; armchairs; chests of drawers; sideboards; plate racks; bins, not of metal; shelving units; coat stands; clothes hangers; clothes hooks; curtain tie-backs; baskets, not of metal; picnic baskets (not fitted); wicker baskets; parts and fittings for all the aforesaid goods.</i></p> <p><u>Class 21</u></p> <p><i>Household and kitchen utensils and containers; brushes (except paint brushes); unworked or semi-worked glass (except glass used in building); glassware, porcelain, earthenware, pottery and china not included in other classes; waste paper baskets; crockery; coasters (tableware); lunch boxes; cooler boxes; picnic baskets (fitted); combs and sponges; biscuit tins; bread bins; wine stoppers; cork screws; ice buckets; cocktail shakers; salt and pepper mills; spice racks; bottle openers; kitchen and barbecue utensils; cookware; mugs; kettles, teapots and cafetieres; towel rails; toilet</i></p>

Trade Mark	Goods and Services
	<p><i>brushes; laundry bins; fruit juicers; graters; fruit bowls; beakers; toothbrushes; toothbrush holders; soap dishes; light pulls; chopping boards; flasks; oven gloves; vases; candlesticks; bread baskets; bread boards; baskets for domestic use; storage baskets for household use; cups; eggcups; butter dishes; drinking glasses; towel rings; toilet utensils; toilet roll holders; laundry baskets; trays for household purposes; bins for household refuse; parts and fittings for all the aforesaid goods.</i></p> <p><u><i>Class 27</i></u>  <i>Carpets, rugs, mats and matting; linoleum and other materials for covering floors; wall hangings (non-textile); wallpaper; bath mats; door mats.</i></p> <p><u><i>Class 28</i></u>  <i>Games and playthings; gymnastic and sporting articles not included in other classes; ornaments and decorations for Christmas trees; toys; plush toys; electronic activity toys; toys made of metal, wood and plastic; children's toys; trampolines; toys and playthings for infants and children; plush and soft sculpture toys, children's multiple activity toys, electronic teaching games, board games, action skills games, handheld toys, toy scooters and skateboards, play jewellery and makeup, children's play houses, toy telephones, toy vehicles, puzzles, dress-up kits, musical toys.</i></p> <p><u><i>Class 35</i></u>  <i>Advertising; retail services connected with furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings; retail services connected with furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings provided via a mail order catalogue, or from a website specialising in the sale of furniture, furnishings, household articles, leather goods, bags, carpets, rugs, mats, matting, games and playthings, information, advisory and consultancy services relating to all of the aforesaid.</i></p>

Trade Mark	Goods and Services
UKTM 2636692  DWELL	<p><u>Class 18</u></p> <p><i>Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; purses; wallets; briefcases; handbags; shopping bags; suitcases; vanity cases, not fitted; leather trimmings for furniture; clothing for pets; garments for pets; pet leashes and collars; pet harnesses; animal leashes; collars for animals; leads for animals; harnesses for animals; blankets and covers for animals; feed bags for animals; parts and fittings for all the aforesaid goods.</i></p>
EUTM 10288041  DWELL	<p><u>Class 2</u></p> <p><i>Paints, varnishes, lacquers; preservatives against deterioration of wood; colouring matters, dye-stuffs, preservatives against rust; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; stains for leather; wood costings (paints).</i></p> <p><u>Class 4</u></p> <p><i>Illuminants; candles, nightlights and wicks; beeswax; perfumed candles; floating candles; church candles; candle assemblies.</i></p> <p><u>Class 8</u></p> <p><i>Hand tools and implements (hand-operated); cutlery; side arms; razors; cutlery; knives; forks; spoons; hammers; saws; drills; screw drivers; crowbars; awls; spanners; wrenches; hexagonal wrenches; hexagonal spanners; pincers; carving sets; scissors; nutcrackers; can openers, non-electric; vegetable slicers; vegetable choppers; apple corers; ladles for wine; culinary hand tools and instruments, namely knives and other food cutting and slicing implements; non-electric pasta makers; implements for the serving of food; serving utensils as far as included in this class; parts and fittings for all the aforesaid goods.</i></p>

Class 9

*Magnetic boards; fridge magnets; downloadable electronic publications; parts and fittings for all the aforesaid goods.*

Class 11

*Apparatus for lighting, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; bathroom furniture in the form of sanitary ware; sanitary ware; sanitary ware made of ceramic materials; sanitary ware made of plastic; sanitary ware made of porcelain; sanitary ware made of stoneware; stainless steel sanitary ware; lighting and lighting installations; lamps, electric lamps, lamp globes, lamp glasses, lampshades, chandeliers, ceiling lights; desk lights; floor lights; wall lights; light bulbs; electric fairy lights; taps; sinks; cooking apparatus and installations; rotisseries; electric griddles; microwave ovens; ventilation devices; extractor hoods for kitchens; motorised fans for ventilation; cooling appliances and installations; refrigerators; freezers; fridge freezers; apparatus for the refrigeration of wines; wine coolers; ice machines; electric waffle irons; toasters; electric woks; electric steamers; bread-making machines; electric fryers; electric kettles; electric cooking utensils; electric sandwich makers; electric espresso machines; electric coffee makers; fondue sets; apparatus for cooking out of doors; barbecues; kettles; acetylene generators; atomic piles; chromatography apparatus for industrial purposes; flare stacks for use in the oil industry; friction lighters for igniting gas; fuel economisers; gas condensers, other than parts of machines; gas generators [installations]; gas lighters; gas scrubbing apparatus; level controlling valves in tanks; lighters; oil-scrubbing apparatus; polymerisation installations; processing installations for fuel and nuclear moderating material; refining towers for distillation; regulating and safety accessories for gas apparatus; regulating and safety accessories for gas pipes; scrubbers [parts of gas installations]; tanning apparatus [sun beds]; ultraviolet ray lamps, not for medical purposes; parts and fitting for all the aforesaid goods.*

Class 14

*Jewellery; key rings; goods of precious metal not included in other classes (excluding clocks and watches, chronological instruments and apparatus); jewellery boxes; jewellery trees.*

Class 16

*Advertising and promotional materials; teaching and instructional materials; paper and articles made of paper; gift and greetings cards; wrapping paper; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); packaging paper; paper or plastic bags, sachets and packing foils; catalogues; posters; school stationery; indexing cabinets (other than furniture); storage cabinets (other than furniture) for filing purposes; tablecloths and paper napkins; calendars; pens; pencils; gums; folders for papers; notebooks, repertories, inkstands, writing pads, pencil boxes; cabinets for stationery (office requisites); engravings; lithographic works for art; paintings (pictures) framed or unframed; bookends; wall art; adhesive wall decorations.*

Class 19

*Tiles, not of metal; wall tiles, not of metal; floor tiles, not of metal; non-metallic kitchen tiles; kitchen worktops; outdoor blinds, not of metal and not of textile; floorboards; parquet flooring; jalousies, not of metal; mantelpieces; works of art of stone, concrete or marble.*

Class 21

*Household and kitchen utensils and containers; brushes (except paint brushes); unworked or semi-worked glass (except glass used in building); glassware, porcelain, earthenware, pottery and china not included in other classes; waste paper baskets; crockery; coasters (tableware); lunch boxes; cooler boxes; picnic baskets (fitted); combs and sponges; biscuit tins; bread bins; wine stoppers; cork screws; ice buckets; cocktail shakers; salt and pepper mills; spice racks; bottle openers; kitchen and barbecue utensils;*



Trade Mark	Goods and Services
	<p><i>cookware; mugs, teapots and cafetieres; towel rails; toilet brushes; laundry bins; fruit juicers; graters; fruit bowls; beakers; toothbrushes; toothbrush holders; soap dishes; light pulls; chopping boards; flasks; oven gloves; vases; candlesticks; candle holders; wall decorations or porcelain or glass (other than parts of buildings); bread baskets; bread boards; baskets for domestic use; storage baskets for household use; storage jars; money boxes, not of metal; cups; plates; eggcups; butter dishes; drinking glasses; mug racks; mug trees; towel rings; toilet utensils; toilet roll holders; toilet brush holders; laundry baskets; soap dispensers; lotion dispensers; baking trays; cake tins; cake stands; cake molds; cake pans; household utensils and accessories for cooking, cleaning and preparing food; pots and saucepans; frying pans; woks (non-electric); casserole dishes; roasting tins; potato mashers; salad spinners; spoons for mixing, serving and basting; pot and pan scrapers; spatulas; whisks; sieves; strainers; non-electric food mixers, blenders and coffee makers; hand operated food processors; hand operated garlic presses; serving bowls; knife blocks; tableware; chopsticks; bottle openers; parts and fitting for all the aforesaid goods.</i></p> <p><u><i>Class 24</i></u>  <i>Textiles and textile goods, not included in other classes; bed and table covers; textile piece goods; textile articles; bed linen; bedspreads; bed clothes; duvets; quilts; eiderdowns (quilts); sheets; blankets; duvet covers; pillow cases; wall hangings; curtains; cushion covers; furniture covers; furnishing fabrics; table linen; table cloths; table mats; napkins; kitchen linen; towels; textiles for decoration purposes; fabrics for textile use; upholstery fabrics; household linen; bath linen; table mats; table runners (textile); shower curtains; teatowels; place mats not of paper.</i></p> <p><u><i>Class 25</i></u>  <i>Articles of clothing, footwear and headgear; aprons; belts (clothing).</i></p>

Trade Mark	Goods and Services
	<p><u>Class 31</u>  <i>Agricultural, horticultural and forestry products and grains not included in other classes; seeds, natural plants and flowers; live plants and flowers; dried flowers; flower seeds.</i></p> <p><u>Class 39</u>  <i>Packaging and storage of goods; rental of vehicle roof racks; freight forwarding of goods; delivery of goods; delivery of goods by mail order; transport of goods by road, by railway, by boat and airplanes; storage of furniture, household articles and offices requisites; delivery of furniture, furnishings, articles for interior decoration and for home; advisory, consultancy and information services relating to all the aforesaid.</i></p> <p><u>Class 41</u>  <i>Education; providing of training; sporting and cultural activities; training and teaching services; information and advisory services relating to any of the above.</i></p> <p><u>Class 42</u>  <i>Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles; packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines and catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information services relating to all the aforesaid.</i></p> <p><u>Class 43</u>  <i>Services for providing food and drink; restaurant, bar and cafeteria services; catering services; public house services; advisory, consultancy and information services relating to all the aforesaid.</i></p>

UKTM 2486083

DWELL

LIVE LIKE THIS

Class 11

*Bathroom furniture in the form of sanitary ware; sanitary ware; sanitary ware made of ceramic materials; sanitary ware made of plastic; sanitary ware made of porcelain; sanitary ware made of stoneware; stainless steel sanitary ware; lighting and lighting installations; parts and fittings for all the aforesaid goods.*

Class 16

*Advertising and promotional materials; teaching and instructional materials; paper and articles made of paper; gift and greetings cards; wrapping paper; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; type writers and office requisites (except furniture); packaging paper; paper or plastic bags, sachets and packing foils; catalogues, posters, school stationery, indexing cabinets, storage cabinet (other than furniture) for filing purposes; tablecloths and paper napkins, calendars, pens, pencils, gums, folders for papers; notebooks, repertories, inkstands, writing pad, pencil boxes; cabinets for stationery (office requisites); engravings; lithographic works of art; paintings (pictures) framed or unframed.*

Class 20

*Mattresses; furniture; stools, chairs; picture frames; ornaments made of wood, wax, plaster or plastic; cushions; wine racks and spice racks; trays and bins; magazine racks; wine cases; tables; storage boxes; bathroom furniture and bathroom cabinets; towel rings; shelves; storage units; hooks; curtain rings, tracks and poles; baskets; window boxes made of plastic and wood; umbrella stands; table mats; mirrors; parts and fittings for all the aforesaid goods.*

Class 21

*Waste paper baskets; household and kitchen utensils and containers; glassware, earthenware, porcelain, pottery, china; crockery; coasters; lunch boxes, cooler boxes and picnic baskets; combs and sponges; biscuit tins and bread bins; wine stoppers and cork screws; ice buckets and cocktail shakers; salt and pepper mills;*

Trade Mark	Goods and Services
	<p><i>bottle openers; kitchen and barbecue utensils; cookware; mugs; kettles, teapots and cafetieres; towel rails; toilet brushes; laundry bins; fruit juicers; graters; fruit bowls; beakers; toothbrush holders; soap dishes; light pulls; chopping boards; flasks; oven gloves; parts and fittings for all the aforesaid goods.</i></p> <p><u><i>Class 24</i></u>  <i>Textile piece goods; textile articles; bed linen; bedspreads; bed clothes; duvets; quilts; eiderdowns; sheets; blankets; duvet covers; pillow cases; wall hangings; curtains; cushion covers; furniture covers; furnishing fabrics; table linen; table cloths; table mats; napkins; kitchen linen; towels; textiles for decoration purposes.</i></p> <p><u><i>Class 27</i></u>  <i>Carpets, rugs., mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile).</i></p> <p><u><i>Class 35</i></u>  <i>Retail services connected with furniture, furnishings and household articles; retail services connected with furniture, furnishings and household articles provided via a mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid.</i></p> <p><u><i>Class 39</i></u>  <i>Packaging and storage of goods; rental of vehicles roof racks; freight forwarding of goods; delivery of goods; delivery of goods by mail order; transports of goods by road, by railway, by boat and airplanes; storages of furniture, household articles and offices requisites; delivery of furniture, furnishings, articles for interior decoration and for home; advisory, consultancy and information services relating to all the aforesaid.</i></p>

Trade Mark	Goods and Services
	<p><u>Class 42</u>  <i>Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles; packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines, catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information relating to all the aforesaid.</i></p>
<p>UKTM 2430056  DWELL</p>	<p><u>Class 2</u>  <i>Paints, varnishes, lacquers; preservatives against deterioration of wood; colouring matters, dye-stuffs.</i></p> <p><u>Class 4</u>  <i>Illuminants; candles, nightlights and wicks; candle holders for Christmas trees.</i></p> <p><u>Class 8</u>  <i>Hand tools; hammers, saws, drills, screw drivers, crowbars, awls, spanners, wrenches, hexagonal wrenches, hexagonal spanners, pincers, carving sets, chopsticks; scissors, nutcrackers, can and bottle openers, ladles, skimmers and spatulas.</i></p> <p><u>Class 9</u>  <i>Recorded tapes, discs, cassettes, cinematographic films, CD-ROMs; information shared on electronic, magnetic and/or optical means; computer software; weighing and measuring apparatus and equipment; scales and bathroom scales; parts and fittings for all the aforesaid goods.</i></p> <p><u>Class 14</u>  <i>Jewellery; key rings, goods of precious metal (excluding clocks and watches, chronological instruments and apparatus).</i></p>

Trade Mark	Goods and Services
	<p><u>Class 16</u>  <i>Advertising and promotional materials; teaching and instructional materials; paper and articles made of paper; gift and greetings cards; wrapping paper; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; type writers and office requisites (except furniture); packing paper; paper or plastic bags, sachets and packing foils; catalogues, posters, school stationery, indexing cabinets, storage cabinet (other than furniture) for filing purposes; tablecloths and paper napkins, calendars, pens, pencils, gums, folders for papers; notebooks, repertories, inkstands, writing pad, pencil boxes; cabinets for stationery (office requisites); engravings; lithographic works of art; paintings (pictures) framed or unframed.</i></p> <p><u>Class 18</u>  <i>Leather and imitations of leather, articles made from these materials, such as trunks and travelling bags, purses and wallets; umbrellas and parasols.</i></p> <p><u>Class 20</u>  <i>Mattresses.</i></p> <p><u>Class 21</u>  <i>Waste paper baskets.</i></p> <p><u>Class 25</u>  <i>Articles of clothing, footwear and headgear.</i></p> <p><u>Class 27</u>  <i>Carpets, rugs, mats and matting; linoleums and other materials for covering floors; wall hangings (non-textile).</i></p> <p><u>Class 28</u>  <i>Games and playthings; toys; plush toys; sporting and gymnastic articles; ornaments and decorations for Christmas trees; electronic</i></p>

Trade Mark	Goods and Services
	<p><i>activity toys; toys made of metal, wood, plastic; children's toys; trampolines; toys and playthings for infants and children; plush and soft sculpture toys, children's multiple activity toys, electronic teaching games, board games, action skill games, handheld toys, toy scooters and skateboards, play jewellery and makeup, children's play houses, toy telephones, toy vehicles, puzzles, dress-up kits, musical toys.</i></p> <p><u><i>Class 31</i></u> <i>Live plants and flowers; dried flowers; flower seeds.</i></p> <p><u><i>Class 39</i></u> <i>Packaging and storage of goods; rental of vehicles roof racks; freight forwarding of goods, delivery of goods; delivery of goods by mail order; transports of goods by road, by railway, by boat and airplanes; storages of furniture, household articles and offices requisites; delivery of furniture, furnishings, articles for interior decoration and for home; advisory, consultancy and information services relating to all of the aforesaid.</i></p> <p><u><i>Class 41</i></u> <i>Publishing services; electronic publishing; production of sound and video recordings; training and teaching services; information and advisory services relating to any of the above.</i></p> <p><u><i>Class 42</i></u> <i>Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles; packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines, catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information services relating to all the aforesaid,</i></p>

Trade Mark	Goods and Services
	<p><u>Class 43</u>  <i>Restaurant, bar and cafeteria services; public house services; advisory, consultancy and information services relating to all the aforesaid.</i></p>
<p>UKTM 2323179</p> <p>DWELL</p>	<p><u>Class 8</u>  <i>Tableware, cutlery; knives, forks, spoons; parts and fittings for all of the above.</i></p> <p><u>Class 11</u>  <i>Bathroom furniture in the form of sanitary ware; sanitary ware; sanitary ware made of ceramic materials; sanitary ware made of plastic; sanitary ware made of porcelain; sanitary ware made of stoneware; stainless steel sanitary ware; lighting and lighting installations; parts and fittings for all the aforesaid goods.</i></p> <p><u>Class 20</u>  <i>Furniture; stools, chairs; picture frames; ornaments made of wood, wax, plaster or plastic; cushions; wine racks and spice racks; trays and bins; magazine racks; wine cases; tables; storage boxes; bathroom furniture and bathroom cabinets; towel rings; shelves; storage units; hooks; curtain rings, tracks and poles; baskets; window boxes made of plastic and wood; umbrella stands; table mats; mirrors; parts and fittings for all the aforesaid goods.</i></p> <p><u>Class 21</u>  <i>Household and kitchen utensils and containers; glassware, earthenware, porcelain, pottery, china; crockery; coasters; lunch boxes, cooler boxes and picnic baskets; combs and sponges; biscuit tins and bread bins; wine stoppers and cork screws; ice buckets and cocktail shakers; salt and pepper mills; bottle openers; kitchen and barbecue utensils; cookware; mugs; kettles; teapots and cafetieres; towel rails; toilet brushes; laundry bins; fruit juicers; graters; fruit bowls; beakers, toothbrushes, toothbrush holders; soap dishes; light pulls; chopping boards; flasks; oven gloves; parts and fittings for all the aforesaid goods.</i></p>



Trade Mark	Goods and Services
	<p><u>Class 24</u></p> <p><i>Textile piece goods; textile articles; bed linen; bedspreads; bed clothes; duvets; quilts; eiderdowns; sheets; blankets; duvet covers; pillow cases; wall hangings; curtains; cushion covers; furniture covers; furnishing fabrics; table linen; table cloths; table mats; napkins; kitchen linen; towel; textiles for decoration purposes.</i></p> <p><u>Class 35</u></p> <p><i>The bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a furniture or furnishings store or from a store specialising in the sale of household articles or from a furniture, household articles and furnishings mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid.</i></p>

## Annex B

### Full List of Goods and Services for Comparison

Opponent's goods and services	Applicant's services
<p><u>Class 2</u>  <i>Paints, varnishes, lacquers; preservatives against deterioration of wood; colouring matters, dye-stuffs, preservatives against rust; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; stains for leather; wood costings (paints).</i></p> <p><u>Class 4</u>  <i>Illuminants; candles, nightlights and wicks; beeswax; perfumed candles; floating candles; church candles; candle assemblies.</i></p> <p><u>Class 8</u>  <i>Hand tools and implements (hand-operated); cutlery; side arms; razors; cutlery; knives; forks; spoons; hammers; saws; drills; screw drivers; crowbars; awls; spanners; wrenches; hexagonal wrenches; hexagonal spanners; pincers; carving sets; scissors; nutcrackers; can openers, non-electric; vegetable slicers; vegetable choppers; apple corers; ladles for wine; culinary hand tools and instruments, namely knives and other food cutting and slicing implements; non-electric pasta makers; implements for the serving of food; serving utensils as far as</i></p>	<p><u>Class 36</u>  <i>Management of real estate, apartments and buildings; real estate affairs; renting or leasing of apartments, accommodation and real estate; accommodation bureaux (apartments); real estate investment; real estate investment management; and property portfolio management.</i></p> <p><u>Class 43 (DWELL STUDENT and DWELL)</u>  <i>Accommodation bureaux (boarding houses); agency services for the reservation of accommodation; arranging of temporary accommodation; boarding houses; boarding house bookings; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</i></p> <p><u>Class 43 (DWELL STUDENT LIVING)</u>  <i>Accommodation bureaux (boarding houses); agency services for the reservation of temporary accommodation; arranging of temporary accommodation; arranging of meals; boarding houses;</i></p>

<p><i>included in this class; parts and fittings for all the aforesaid goods.</i></p> <p><u><i>Class 9</i></u>  <i>Magnetic boards; fridge magnets; downloadable electronic publications; parts and fittings for all the aforesaid goods.</i></p> <p><u><i>Class 11</i></u>  <i>Apparatus for lighting, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; bathroom furniture in the form of sanitary ware; sanitary ware; sanitary ware made of ceramic materials; sanitary ware made of plastic; sanitary ware made of porcelain; sanitary ware made of stoneware; stainless steel sanitary ware; lighting and lighting installations; lamps, electric lamps, lamp globes, lamp glasses, lampshades, chandeliers, ceiling lights; desk lights; floor lights; wall lights; light bulbs; electric fairy lights; taps; sinks; cooking apparatus and installations; rotisseries; electric griddles; microwave ovens; ventilation devices; extractor hoods for kitchens; motorised fans for ventilation; cooling appliances and installations; refrigerators; freezers; fridge freezers; apparatus for the refrigeration of wines; wine coolers; ice machines; electric waffle irons; toasters; electric woks; electric steamers; bread-making machines; electric fryers; electric kettles; electric cooking utensils; electric sandwich</i></p>	<p><i>boarding house bookings; cafeteria services; canteen services; consultancy and advisory services relating to the provision of temporary accommodation; providing information, including online, about services for providing food and drink, and temporary accommodation; rental of cooking apparatus; provision of temporary accommodation; temporary accommodation reservations.</i></p>
---	--

*makers; electric espresso machines; electric coffee makers; fondue sets; apparatus for cooking out of doors; barbecues; kettles; acetylene generators; atomic piles; chromatography apparatus for industrial purposes; flare stacks for use in the oil industry; friction lighters for igniting gas; fuel economisers; gas condensers, other than parts of machines; gas generators [installations]; gas lighters; gas scrubbing apparatus; level controlling valves in tanks; lighters; oil-scrubbing apparatus' polymerisation installations; processing installations for fuel and nuclear moderating material; refining towers for distillation; regulating and safety accessories for gas apparatus; regulating and safety accessories for gas pipes; scrubbers [parts of gas installations]; tanning apparatus [sun beds]; ultraviolet ray lamps, not for medical purposes; parts and fitting for all the aforesaid goods.*

*Class 14*

*Jewellery; key rings; goods of precious metal not included in other classes (excluding clocks and watches, chronological instruments and apparatus); jewellery boxes; jewellery trees.*

*Class 16*

*Advertising and promotional materials; teaching and instructional materials; paper and articles made of paper; gift and greetings cards; wrapping paper; bookbinding material; photographs;*

*stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); packaging paper; paper or plastic bags, sachets and packing foils; catalogues; posters; school stationery; indexing cabinets (other than furniture); storage cabinets (other than furniture) for filing purposes; tablecloths and paper napkins; calendars; pens; pencils; gums; folders for papers; notebooks, repertories, inkstands, writing pads, pencil boxes; cabinets for stationery (office requisites); engravings; lithographic works for art; paintings (pictures) framed or unframed; bookends; wall art; adhesive wall decorations.*

**Class 18**

*Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas and parasols; walking sticks; whips, harness and saddlery; purses; wallets; briefcases; handbags; shopping bags; suitcases; vanity cases, not fitted; leather trimmings for furniture; clothing for pets; garments for pets; pet leashes and collars; pet harnesses; animal leashes; collars for animals; leads for animals; harnesses for animals; blankets and covers for animals; feed bags for animals; parts and fittings for all the aforesaid goods.*

Class 19

*Tiles, not of metal; wall tiles, not of metal; floor tiles, not of metal; non-metallic kitchen tiles; kitchen worktops; outdoor blinds, not of metal and not of textile; floorboards; parquet flooring; jalousies, not of metal; mantelpieces; works of art of stone, concrete or marble.*

Class 20

*Furniture, mirrors; mattresses; stools; chairs; cushions; magazine racks; tables; storage boxes; shelves; storage units; umbrella stands; sofas; beds; armchairs; chests of drawers; sideboards; shelving units*

Class 21

*Household and kitchen utensils and containers; brushes (except paint brushes); unworked or semi-worked glass (except glass used in building); glassware, porcelain, earthenware, pottery and china not included in other classes; waste paper baskets; crockery; coasters (tableware); lunch boxes; cooler boxes; picnic baskets (fitted); combs and sponges; biscuit tins; bread bins; wine stoppers; cork screws; ice buckets; cocktail shakers; salt and pepper mills; spice racks; bottle openers; kitchen and barbecue utensils; cookware; mugs, teapots and cafetieres; towel rails; toilet brushes; laundry bins; fruit juicers; graters; fruit bowls; beakers; toothbrushes; toothbrush holders; soap dishes; light pulls; chopping boards;*

*flasks; oven gloves; vases; candlesticks; candle holders; wall decorations or porcelain or glass (other than parts of buildings); bread baskets; bread boards; baskets for domestic use; storage baskets for household use; storage jars; money boxes, not of metal; cups; plates; eggcups; butter dishes; drinking glasses; mug racks; mug trees; towel rings; toilet utensils; toilet roll holders; toilet brush holders; laundry baskets; soap dispensers; lotion dispensers; baking trays; cake tins; cake stands; cake molds; cake pans; household utensils and accessories for cooking, cleaning and preparing food; pots and saucepans; frying pans; woks (non-electric); casserole dishes; roasting tins; potato mashers; salad spinners; spoons for mixing, serving and basting; pot and pan scrapers; spatulas; whisks; sieves; strainers; non-electric food mixers, blenders and coffee makers; hand operated food processors; hand operated garlic presses; serving bowls; knife blocks; tableware; chopsticks; bottle openers; parts and fitting for all the aforesaid goods.*

*Class 24*

*Textiles and textile goods, not included in other classes; bed and table covers; textile piece goods; textile articles; bed linen; bedspreads; bed clothes; duvets; quilts; eiderdowns (quilts); sheets; blankets; duvet covers; pillow cases; wall hangings; curtains; cushion covers; furniture covers; furnishing fabrics; table linen; table cloths;*

*table mats; napkins; kitchen linen; towels; textiles for decoration purposes; fabrics for textile use; upholstery fabrics; household linen; bath linen; table mats; table runners (textile); shower curtains; teatowels; place mats not of paper.*

*Class 25*

*Articles of clothing, footwear and headgear; aprons; belts (clothing).*

*Class 27*

*Rugs*

*Class 31*

*Agricultural, horticultural and forestry products and grains not included in other classes; seeds, natural plants and flowers; live plants and flowers; dried flowers; flower seeds.*

*Class 35*

*Retail services connected with furniture, furnishings, household articles, rugs; retail services connected with furniture, furnishings, household articles and rugs provided via a mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid services;*  
*the bringing together for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods in a furniture or*



*furnishings store or from a store specialising in the sale of household articles or from a furniture, household articles and furnishings mail order catalogue, or from a website specialising in the sale of furniture, furnishings and household articles; information, advisory and consultancy services relating to all of the aforesaid.*

**Class 39**

*Packaging and storage of goods; rental of vehicle roof racks; freight forwarding of goods; delivery of goods; delivery of goods by mail order; transport of goods by road, by railway, by boat and airplanes; storage of furniture, household articles and offices requisites; delivery of furniture, furnishings, articles for interior decoration and for home; advisory, consultancy and information services relating to all the aforesaid.*

**Class 41**

*Education; providing of training; sporting and cultural activities; training and teaching services; information and advisory services relating to any of the above.*

**Class 42**

*Design services; industrial design services, consumer product design services; interior design services; kitchen and bathroom design; design of furniture, textiles, decoration and lighting articles;*

*packaging design; planning and design of offices; lighting consultants; graphic design services; the design of books, newspapers, magazines and catalogues, brochures, publications, printed material and publicity and advertising material; interior decoration services; advisory, consultancy and information services relating to all the aforesaid.*

**Class 43**

*Services for providing food and drink; restaurant, bar and cafeteria services; catering services; public house services; advisory, consultancy and information services relating to all the aforesaid.*