



**LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADE-MARKS**

**Citation: 2015 TMOB 37
Date of Decision: 2015-02-28**

**IN THE MATTER OF AN OPPOSITION
by Virgin Enterprises Limited to
application No. 1,496,116 for the trade-
mark EXTRA VIRGIN MINERALS in the
name of The Body Shop International Plc**

Introduction

[1] The VIRGIN brand is iconic with total revenue worldwide of over \$18 billion Cdn in 2009. Over 50,000 people in 30 countries are employed by Virgin brand companies. Many Canadians are familiar with this brand through its offerings in Canada including Virgin Mobile, Virgin Radio, Virgin Atlantic and Virgin Records or by virtue of the press related to these ventures or others such as Virgin Galactic and its founder, the famous entrepreneur Sir Richard Branson.

[2] Virgin Enterprises Limited (VEL), the owner of the VIRGIN brand, opposes The Body Shop International Plc's application for the trade-mark EXTRA VIRGIN MINERALS for use with cosmetics and related products on the basis that the use of this mark is likely to create confusion in the marketplace. VEL states that any new VIRGIN brands are expected to originate from the Virgin brand companies and there is a strong likelihood that marks consisting of or incorporating VIRGIN, such as EXTRA VIRGIN MINERALS, will be confused with its trade-marks and trade-names.

[3] For this opposition to be rejected, The Body Shop International Plc must show that its trade-mark will *not* cause confusion within the meaning of section 6 of the *Trade-marks Act* RSC 1985, c T-13 (the Act). The test under section 6(2) of the Act does not concern confusion of the marks themselves, but rather confusion of goods or services from one source as being from another. Confusion will only be found if a link or association is likely to arise in the consumer's mind between the source of the goods and services associated with the VIRGIN brand and those associated with the trade-mark EXTRA VIRGIN MINERALS. If there is no likelihood of a link, there can be no likelihood of a mistaken inference, and no confusion within the meaning of the Act [*Mattel, Inc v 3894207 Canada Inc*, [2006] 1 SCR 772 (SCC) at para 6].

[4] After a review of all of the surrounding circumstances including those enumerated in section 6(5) of the Act, despite the fame of the VIRGIN brand, due to the difference in appearance, sound and idea suggested by the parties' trade-marks, I conclude that there is no reasonable likelihood of confusion. Based on the evidence of record, a consumer encountering the trade-mark EXTRA VIRGIN MINERALS is likely to infer that the the associated goods are related to extra-virgin olive oil as opposed to the VIRGIN brand of VEL.

File History

[5] On September 16, 2010, The Body Shop International Plc (the Applicant) filed an application to register the trade-mark EXTRA VIRGIN MINERALS in association with the following Goods (as amended):

(1) Cosmetics and skin care preparations; makeup remover, body powder, skin soaps, bath gel, bath oils, bath salts and bath beads; hair care preparations; personal deodorants, sun-tanning preparations, sunscreen oils and lotions; shaving balm, foam, cream, soap, gel and lotion; perfumes, eau de toilette, essential oils for personal use, perfume oils, nail care preparations; nail enamel, pumice stone, cotton sticks and wool swabs for non-medical purposes all for use on the body; scented room fragrances; incense sticks, potpourri and sachets, powdered cosmetic tissues, tissues impregnated with cosmetic lotions; kits and gift sets containing skin and hair care preparations.

The application was filed on the basis of the Applicant's proposed use in Canada and claims a priority date of August 20, 2010.

[6] The application was advertised for opposition purposes in the *Trade-marks Journal* of August 3, 2011.

[7] On January 3, 2012, VEL (the Opponent) filed a statement of opposition pleading the grounds summarized below:

- (a) contrary to section 30(i) of the Act, the Applicant could not have been satisfied of its entitlement to use the Mark as it should have been aware of the Opponent's family of trade-marks comprising the name VIRGIN and the trade-marks and trade-names Virgin Cosmetics, Virgin Vie and Virgin Vie at Home;
- (b) contrary to section 12(1)(d) of the Act, the Mark is not registrable because it is confusing with the Opponent's registered trade-marks listed below including VIRGIN VIE (registration No. TMA668,075) and VIRGIN VIE Design (registration No. TMA638,944);

| | | | |
|------------|------------|------------|------------|
| TMA222,303 | TMA231,861 | TMA383,374 | TMA404,724 |
| TMA405,050 | TMA524,506 | TMA524,590 | TMA509,209 |
| TMA674,540 | TMA674,541 | TMA690,466 | TMA690,462 |
| TMA744,547 | TMA744,545 | TMA801,313 | TMA323,461 |
| TMA323,747 | TMA608,703 | TMA600,131 | TMA602,222 |
| TMA504,414 | TMA509,210 | TMA675,261 | TMA675,250 |
| TMA723,120 | TMA766,526 | TMA734,145 | TMA768,559 |
| TMA768,094 | TMA668,075 | TMA638,944 | TMA442,678 |

| | | | |
|------------|------------|--|--|
| TMA443,824 | TMA801,688 | | |
|------------|------------|--|--|

(c) contrary to sections 16(3)(a) and 16(3)(b) of the Act, the Applicant is not the person entitled to registration of the Mark since the application is confusing with the Opponent's previously applied-for trade-marks set out by application number below and the use of these trade-marks;

| | | | |
|-----------|-----------|-----------|-----------|
| 388,068 | 421,594 | 599,724 | 606,775 |
| 606,776 | 758,841 | 758,842 | 837,863 |
| 1,135,419 | 1,135,420 | 1,195,396 | 1,195,398 |
| 1,246,354 | 1,246,358 | 1,332,099 | 1,332,987 |
| 1,401,660 | 1,460,896 | 539,230 | 539,229 |
| 1,135,418 | 1,087,535 | 1,087,536 | 1,376,988 |
| 837,846 | 837,845 | 1,195,397 | 1,195,399 |
| 1,245,494 | 1,358,547 | 1,359,438 | 1,489,470 |
| 1,460,883 | 1,408,381 | 1,408,382 | 1,332,103 |
| 1,332,104 | 1,332,989 | 1,332,998 | 1,054,615 |
| 1,170,729 | 1,334,701 | 699,205 | 699,206 |

(d) contrary to section 16(3)(c) of the Act, the Applicant is not the person entitled to registration of the Mark since the application is confusing with the Opponent's

trade-names which begin with the name Virgin or those that use the name Virgin followed by a descriptor denoting the goods and services; and

- (e) contrary to section 2 of the Act, the Mark is not and cannot be distinctive of the Goods in that the Mark was not and is not adapted to distinguish and does not actually distinguish the Goods from the goods and services of the Opponent in Canada.

[8] The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[9] In support of its opposition, the Opponent filed the affidavit of Victoria Wisener. In support of its application, the Applicant filed the affidavits of Jacqueline Kennedy and Amrita V.S. Singh.

[10] In a letter dated January 30, 2014, the Registrar declined to grant leave to the Opponent's request to amend the statement of opposition to add a ground of opposition based on section 12(1)(b) of the Act.

[11] Both parties filed a written argument and attended an oral hearing held on October 15, 2014.

Onus and Material Dates

[12] The Applicant bears the legal onus of establishing, on a balance of probabilities that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[13] The material dates with respect to the grounds of opposition are as follows:

- section 38(2)(a)/30 of the Act - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];

- section 38(2)(b)/12(1)(d) of the Act - the date of my decision [*Park Avenue Furniture*

Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks (1991), 37 CPR (3d) 413 (FCA)];

- section 38(2)(c)/16(3) of the Act - the priority date of the application; and

- section 38(2)(d) of the Act - the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

Section 30(i) Ground of Opposition

[14] The section 30(i) ground of opposition alleges that the Applicant could not have been satisfied that it is entitled to use the Mark because the Applicant must have been aware of the Opponent's trade-marks and trade-names. Where an applicant has provided the statement required by section 30(i), this ground should only succeed in exceptional cases such as where there is evidence of bad faith [*Sapodilla Co v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. As the application includes the required statement and there is no allegation or evidence of bad faith or other exceptional circumstances, the section 30(i) ground is rejected.

Sections 12, 16 and 2 Grounds of Opposition

Summary of the Opponent's Evidence

[15] The Opponent's evidence summarized below leads to the conclusion that the VIRGIN brand is famous in Canada for a wide variety of goods and services.

[16] Ms. Wisener is a Trade Mark Attorney employed by the Opponent (Wisener affidavit, para 1). She explains that VEL is a member of a group of companies known collectively as the Virgin Group (Wisener affidavit, para 3). VEL is responsible for the ownership, management and protection of all trade-marks including VIRGIN (the Virgin Marks) and licenses the Virgin Marks to approximately 60 licensees (Wisener affidavit, paras 5, 12). In all cases, the use of the Virgin Marks by its licensees is strictly controlled by the Opponent (Wisener affidavit, para 12). Furthermore, the Opponent has control over its licensees within and outside the Virgin Group (Wisener affidavit, para 5).

[17] In this case, where the affiant has not been cross-examined and the Applicant has not questioned the licensing of the Virgin Marks, nor the fact that the Opponent is well known in the record, retail, telecommunications and airline industries, I am prepared to accept that any use of the VIRGIN Marks by the Opponent's licensees enures to it since the inference exists that if use of the marks is strictly controlled so to is the character and quality of the goods and services [see *D & S Meat Products Ltd v Peameal Bacon of Canada Ltd* (2013), 110 CPR (4th) 412 (TMOB) at paras 13-15 where the Registrar found a similar statement sufficient to satisfy section 50(1) of the Act and *Allianz Global Investors of America LP v. Middlefield Capital Corporation*, 2014 FC 620 at para 14 where Mr. Justice Rennie uses the language of "control over the quality and character of the mark"]. Such an inference of implicit control is supported by the business model of the Opponent which allows for Virgin branding of a quality and innovative service or product that is slightly different than the run of the mill (Wisener affidavit, para 278 and Exhibit C1). Second, the VIRGIN trade-mark appears on sound recordings available in Canada along with a notation that VEL is the owner (Wisener affidavit, Exhibit P) and some of the press reporting on Virgin Radio and Virgin Mobile (two Canadian licensees) refers to the services being available under license (Wisener affidavit, Exhibits O and MM).

[18] I am aware of the Registrar's recent decision in the opposition to an application for VIRGIN WATER where the Registrar found differently on the issue of licensing based in part on the submissions of the applicant City Water International Inc [*Virgin Enterprises Limited v City Water International Inc* 2015 TMOB 19]. It is trite law that each case must be decided on its own merits which necessarily includes a consideration of the submissions of the parties on a particular issue (or the lack thereof).

International Reputation

[19] Ms. Wisener explains that the Virgin Group was originally established by Sir Richard Branson in 1970 when he started a business selling records under the VIRGIN name (Wisener affidavit, para 4). Since then the Virgin Group has grown significantly and has created more than 300 branded companies, employing 50,000 people in 30 countries (Wisener affidavit, para 4). Global branded revenues in 2009 exceeded \$18.5 billion Cdn (Wisener affidavit, para 4).

[20] Ms. Wisener further explains that the reputation of the Virgin Group is not limited to any particular group or industry and in each venture it relies heavily on the VIRGIN name (Wisener affidavit, para 276). At Exhibit TT to her affidavit Ms. Wisener attaches a list of current and historical uses of the Virgin Name with additional words or elements. This list includes over eighty names such as Virgin Atlantic, Virgin Books, Virgin Cola, Virgin Cosmetics, Virgin Express, Virgin Freeway, Virgin Hotels, Virgin Media, Virgin Money, Virgin Radio, Virgin Spring, Virgin Trains, and Virgin Vodka. Of the over eighty names listed only two do not begin with the word Virgin: The Virgin Trading Company and The Virgin Voucher.

Virgin Cosmetics

[21] The Virgin Group operated a cosmetics, toiletries, beauty products and beauty services business called Virgin Cosmetics which provided beauty products and services under the trademarks VIRGIN VIE and VIRGIN VIE AT HOME (Wisener affidavit, para 194). Formed in 1997, Virgin Cosmetics provided beauty products and services online and through nearly 10,000 consultants and 16 stores in the UK (Wisener affidavit, para 194). Ms. Wisener attaches the VIRGIN VIE catalogues from 1999-2005 which show VIRGIN VIE branded nail polish, body scrubs, lotions, creams, make-up, and jewelry (Wisener affidavit, Exhibits AA and BB). Ms. Wisener explains that the Virgin Cosmetics business was bought out by management and rebranded as VIE at Home (Wisener affidavit, para 195). There is no evidence that VIRGIN VIE brand cosmetics were available after 2005 or that Canadians have ever been exposed to the VIRGIN VIE brand.

Virgin Group's Activities in Canada

Virgin Mobile

[22] Virgin Mobile Canada was launched in March 2005 in partnership with Bell Mobility (Wisener affidavit, para 83). In 2008, the number of subscribers was over 770,000 (Wisener affidavit, para 83). It is now wholly owned by Bell Mobility who continues to use the Virgin Marks under license from VEL (Wisener affidavit, para 283). Since its launch in 2005, Virgin Mobile Canada has sold shirts, jackets, hats, tracksuits, compact disks, DVDs, and ringtones, images and games for use on mobile phones (Wisener affidavit, para 84, Exhibit L). In Canada,

the turnover in each of the years 2007, 2008 and 2009 exceeded \$100 Million USD (Wisener affidavit, para 89). Virgin Mobile phones, top up vouchers and accessories are available at Virgin Mobile's retail partners including Future Shop, Best Buy, Sears, Wal-Mart and London Drugs (Wisener affidavit, Exhibit M). Further, Virgin Mobile and Virgin Mobile Canada has also sponsored concert tours by Katy Perry and Lady Gaga with stops in Canada (Wisener affidavit, paras 258, 260).

Virgin Radio

[23] Virgin Radio Canada launched in Toronto in 2008, Vancouver, Ottawa and Montreal in 2009 and Calgary in 2010 (Wisener affidavit, para 102). The launch was reported in the Canadian press including in The Toronto Star (August 26, 2008), The Globe and Mail (August 26, 2008), The National Post (August 26, 2008), The Amherst Daily News (August 25, 2008) and the *www.cbc.ca* website (August 25, 2008) (Wisener affidavit, Exhibit O). Ms. Wisener also includes a print-out of the Virgin Radio website dated August 26, 2008 (Exhibit O).

Virgin Records

[24] In 1983, Virgin Records Canada Inc. was created (Wisener affidavit, para 7). CDs and DVDs under the Virgin label are sold in Canada by third party distributors (Wisener affidavit, para 108). The VIRGIN trade-mark is visible on the CD cases distributed in Canada and purchased at a HMV store in Ottawa (Wisener affidavit, Exhibit P).

Virgin Stores

[25] The Vancouver Virgin Megastore was open in Canada from 1996-2005 and offered a complete range of sound and video recorders, audio and video tapes, recordings, films, computer software and games, clothing, accessories and printed publications (Wisener affidavit, para 112). It also had a Virgin Café (Wisener affidavit, para 112). There are also Virgin branded retail outlets "Virgin Books & Music" in Canadian international airports including in Ottawa, Montreal, Toronto, Vancouver and Calgary which feature signage with the VIRGIN trade-mark and sell music, books and consumer goods such as clothing, keychains, shot glasses, travel mugs,

pens, and books which prominently feature the Virgin Marks (Wisener affidavit, paras 117-118, Exhibit R).

Virgin Festival

[26] In Canada, the Virgin Festival originally took place at Island Park, Toronto on September 9-10, 2006 and attracted 30,000 people (Wisener affidavit, para 121). Virgin Festivals are now hosted in Toronto, Vancouver, Calgary, Halifax and Montreal. Attendance was over 75,000 in 2007 and over 155,000 in 2008 (Wisener affidavit, para 121).

Virgin Atlantic

[27] Virgin Atlantic Airways Limited (Virgin Atlantic) has flown a London, UK to Toronto route (summer 2001) and a London, UK to Vancouver route operating four times a week (from May 24, 2012 onwards) (Wisener affidavit, para 21). 40,000 customers are expected to travel between London and Vancouver in 2012 alone (Wisener affidavit, para 28). Virgin Atlantic's services are advertised through its website *www.virgin-atlantic.com* which is accessible to Canadians and where Canadians may book flights and obtain information (Wisener affidavit, para 29, Exhibit D). An article published in the Vancouver Sun on May 26, 2012 details one reporter's experience taking the airline (Wisener affidavit, Exhibit G).

[28] Virgin Atlantic's inflight shopping magazine Retail Therapy features the following: cosmetics (including VIRGIN VIE brand cosmetics as well as those of other companies), VIRGIN brand clothing, VIRGIN brand airport/airplane related toys, and liquor (Wisener affidavit, Exhibit E, para 34). I note that all of the issues in Exhibit E appear to be undated.

[29] Ms. Wisener's affidavit includes print-outs from the Virgin Atlantic website which allows users to book flights and includes information about the Upper Class and Virgin Atlantic airport lounges at a number of different airports (although none in Canada) and the Upper Class Suite (Wisener affidavit, Exhibit H). The Upper Class Suite seat is in business class and is a luxury leather armchair which flips into a bed and is the longest bed of any airline's business class product (Wisener affidavit, Exhibit H). Virgin branded travel packs are provided to

customers and until the end of 2004 these included VIRGIN VIE cosmetics (Wisener affidavit, Exhibit F).

Upper Class Red

[30] In March, 2012, Virgin Atlantic and bareMinerals introduced the lipstick colour Upper Class Red which all female members of the Virgin Atlantic cabin crew must wear (Wisener affidavit, para 36, Exhibit G). The lipstick can be purchased exclusively at the Virgin Atlantic Clubhouse spas at Heathrow, Gatwick and JFK airports and through airline onboard shopping. Samples were also provided to those travelling in the Upper Class cabins (Wisener affidavit, para 36, Exhibit G). The Vancouver Sun article “New flight services oozes innovation – Vancouver-to-London trip” states (Wisener affidavit, Exhibit G):

Its staff is noteworthy, too: The female crew sports uber-groomed trademark red suits, heels and Upper Class Red lips (yes, there’s even a lipstick application thanks to a Virgin Atlantic/bare Minerals collaboration).

Virgin Games and Virgin Gaming

[31] In June 2004, Virgin Games, a gaming website at *www.virgingames.com* which offers players around the world a wide selection of games which can be played for cash or free, was launched (para 161). Introduced in June 2010, Virgin Gaming, a Canadian start-up headquartered in Toronto is a betting platform for gamers to challenge and play against each other (Wisener affidavit, para 204).

Virgin Books

[32] Virgin Books produces 200 new books per annum and maintains an active backlist of about 500 titles (Wisener affidavit, para 165). Books published by Virgin Books display the Virgin Marks and have been distributed worldwide and in Canada from the mid 1990s and are available in retail outlets and on-line (Wisener affidavit, paras 165-166).

Virgin Atlantic Cargo

[33] Virgin Atlantic Cargo offers flights between Vancouver and London and has a Canadian office in Richmond B.C. (Wisener affidavit, para 38). The Richmond office, however, appears to operate under the name Airline Network Services or Mega International Air Services (Wisener affidavit, Exhibit I).

Virgin Galactic

[34] In 2004, Sir Richard Branson announced that the Virgin Group had entered into an agreement to license the technology to develop the world's first privately funded spaceship to carry commercial passengers (Wisener affidavit, para 40). The first space flight is scheduled for 2013/2014 (Wisener affidavit, para 40). Booking of spaceflights is possible for Canadians through the *www.virgingalactic.com* website (Wisener affidavit, para 41).

Virgin Holidays

[35] Virgin Holidays was formed in 1985 and offers package holidays to prime destinations in conjunction with the scheduled services of Virgin Atlantic (Wisener affidavit, para 43). Destinations include North America (including Canada), Asia, Africa, South America, the Middle East, the Indian Ocean and the Caribbean (Wisener affidavit, para 43). Virgin Holidays carries over 400,000 tour passengers (Wisener affidavit, para 44). Virgin Holidays services are advertised through its website *www.virginholidays.com* which is accessible to Canadians and where Canadians can obtain information and book travel (Wisener affidavit, para 45, Exhibit K). However, there is no evidence that Canadians have accessed this website or otherwise booked trips.

Virgin Wines

[36] Virgin Wines have been featured at the Ottawa Wine Show and the Toronto Gourmet Wine & Food show in 2006. In each case, over 4000 consumers sampled Virgin Wines (Wisener affidavit, para 185).

Presence on the Internet

[37] The Opponent owns over 4500 domain names incorporating the VIRGIN name (Wisener affidavit, para 17). The *www.virgin.com* website has been in operation since 1996 and allows consumers to obtain information specific to their countries (Wisener affidavit, para 19). In each of 2009, 2010 and 2011 there were over 500,000 hits from Canada per year to this website (Wisener affidavit, para 23).

Media Attention

[38] The Opponent, its founder Sir Richard Branson and its licensees have received significant media attention increasing the reputation of the Virgin brand in Canada including in the following articles. I am prepared to take judicial notice of the fact that the Toronto Star, The Globe and Mail, Metro, the CBC, and National Post have wide circulation in Canada, the New York Times, Business Weekly and Wall Street Journal has some circulation in Canada and that the Ottawa Sun, Ottawa Citizen, La Presse, The Amherst Daily News and Vancouver Sun have significant circulation in their respective areas [*Milliken & Co v Keystone Industries (1970) Ltd* (1986), 12 CPR (3d) 166 (TMOB) at 168-169].

| Exhibit | Date | Paper | Article Title |
|---------|-------------------|-------------------------|--|
| SS | November 14, 1986 | The Wall Street Journal | Virgin's Initial Offering is Snapped Up by Investors |
| SS | February 14, 2000 | New York Times | Taking Virgin's Brand Into Internet Territory; Richard Branson Says the Web is Ready for His Style of Business |
| O | August 26, 2008 | The Globe and Mail | Astral tests Virgin Branding references - <i>Virgin Radio</i> |
| O | August 26, 2008 | Metro | Virgin Radio tunes into Mix 99.9 |
| O | August 26, 2008 | National Post | Branson launches Virgin radio in Canada |

| Exhibit | Date | Paper | Article Title |
|---------|--------------------|------------------------|---|
| O | August 25, 2008 | The Amherst Daily News | Toronto-based Mix 99.9 to be renamed Virgin Radio |
| O | August 26, 2008 | Toronto Star | Mix FM radio station reborn as Virgin |
| O | August 25, 2008 | CBC News | Toronto radio station rebranded Virgin Radio 999 |
| MM | March 1, 2005 | Globe and Mail | Bell cuts prepaid mobile prices on eve of its Virgin joint venture |
| MM | December 6, 2005 | Ottawa Sun | Now, that's a wrap! Smutty gift paper handed to family at Potter screening |
| MM | April 5, 2006 | Ottawa Citizen | NTL to pay \$1.67B US for Branson's Virgin Mobile |
| MM | March 21, 2007 | Ottawa Citizen | Virgin America drops top exec to meet U.S. regulations |
| MM | March 10, 2007 | Ottawa Citizen | Britain tunes into clash of the titans |
| MM | July 3, 2007 | Ottawa Citizen | Virgin Media up for sale |
| MM | December 23, 2006 | Ottawa Citizen | World: Virgin America pessimistic |
| MM | March 6, 2008 | La Presse | Une lettre ouverte aux 16 millions de Canadiens qui ont un contrat de téléphonie mobile |
| J | September 28, 2004 | Ottawa Sun | Space to become Virgin territory |
| J | September 28, 2004 | New York Times | Virgin to Offer Space Flights (Even, Sort of, at Discount) |
| J | October 15, 2004 | Business Week online | Virgin Galactic's Space Odyssey |
| G | May 26, 2012 | The Vancouver | Vancouver-to-London trip offers |

| Exhibit | Date | Paper | Article Title |
|---------|------|-------|--|
| | | Sun | atmosphere and amenities even in economy |

Applications and Registrations in Canada

[39] In Canada, VEL owns more than 40 trade-mark applications and registrations incorporating the component VIRGIN (Wisener affidavit, Exhibit A).

Conclusion on Opponent’s Evidence

[40] The Opponent’s evidence viewed in its totality leads me to the conclusion that the VIRGIN trade-mark is a well known, if not, famous brand in Canada.

Summary of the Applicant’s Evidence

[41] The Applicant filed the affidavits of Ms. Amrita V.S. Singh and Ms. Jacqueline Kennedy. The evidence of Ms. Singh shows that extra-virgin is a defined term with a widely understood meaning in relation to olive oil. Ms. Kennedy’s evidence shows that the Applicant has used this product in relation to cosmetics including olive oil as an ingredient.

[42] Ms. Singh is an articling student employed by the Applicant’s agent. She provides the following evidence:

- The terms “extra-virgin” and “virgin” are defined in the *Canadian Oxford Dictionary (2nd ed)* as follows: “extra-virgin” (of olive oil) made from the first pressing, cold pressed, thus of high quality and low in acid and “virgin”, in part, as set out below (Singh affidavit, Exhibit E).

a person who has never had sexual intercourse ... the Blessed Virgin Mary ... a naïve, innocent or inexperienced person ... a member of any order of women under a vow of chastity ... the zodiacal sign ... being a virgin ... not yet used, explored, or exploited ... (of olive oil) obtained from the first pressing of olives etc.; unrefined ... (of clay) not yet fired... (of metal) freshly produced from smelted ore rather than from scrap...

- The Olive Oil entry from Wikipedia at Exhibit F of the Singh affidavit explains that olive oil is a fat obtained from the olive and is produced by mechanical or chemical means. It is commonly used in cooking, cosmetics, pharmaceuticals and soaps. Grades of olive oil include “Extra-virgin olive oil” which is the highest grade available and comes from oil production using physical methods which contains no more than 0.8% acidity. I accept the Wikipedia evidence even though it is hearsay since the Opponent had an opportunity to reply to it [*Association of Professional Engineers, Geologists and Geophysicists of Alberta v Alberta Institute of Power Engineers*, 2008 CanLII 88222 (TMOB)].
- More than fifteen brands of olive oil featuring “EXTRA VIRGIN” on its labelling are available at a Loblaws store in Toronto (Singh affidavit, paras 6-8; Exhibits H-I).

[43] The affidavit of Ms. Kennedy, Commercial Director for The Body Shop Canada Limited (The Body Shop) provides the following evidence:

- The Body Shop is a wholly owned subsidiary of the Applicant who is the owner of the trade-marks, copyright and other intellectual property rights used in the operation of THE BODY SHOP stores worldwide (Kennedy affidavit, para 2). The Applicant controls the character and quality of the goods and services covered by the Applicant’s trade-marks which are used under license by The Body Shop (Kennedy affidavit, para 2).
- The Body Shop sells a large range of naturally inspired, ethically produced products, all marked with THE BODY SHOP trade-mark (Kennedy affidavit, para 5).
- The Body Shop first used the Mark in August 2011 in association with a number of mineral foundation products (Kennedy affidavit, paras 4,8; Exhibit E) which include pure minerals and cold-pressed extra virgin olive oil (Kennedy affidavit, para 9). The Body Shop’s website *www.thebodyshop.ca* includes the following (Kennedy affidavit, Exhibit E):

Olive oil is a natural moisturizer for normal to dry skin. It also helps condition hair, and gives it a silky shine. Our olive oil is organic, and comes from our Community Trade partners in southern Italy.

- Since the launch of the EXTRA VIRGIN MINERALS brand, sales of products in Canada have been in excess of \$1.5 million Canadian with more than 90,000 units of products sold (Kennedy affidavit, para 10).
- The Mark has been referenced in The Globe and Mail, Toronto Star and the Toronto Sun (Kennedy affidavit, Exhibit L). The article in the Toronto Sun states: “The Body Shop Extra Virgin Mineral make-up collection features 100% community fair trade pure cold-pressed extra virgin olive oil and ultra-fine mineral pigments”.

Section 12(1)(d) Ground of Opposition

[44] The Opponent has pleaded that the Mark is not registrable because it is confusing with one or more of over 30 trade-marks registered by the Opponent (see paragraph 7(b) of this decision for a full listing). I have exercised my discretion and checked the Register to confirm that each of these registrations is extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. Therefore, the Opponent has met its initial burden with respect to this ground.

[45] I now have to determine, on a balance of probabilities, if the Mark is likely to cause confusion with one or more of the Opponent’s registered trade-marks.

[46] I consider that the Opponent’s best case scenario is registration Nos. TMA668,075 and TMA638,944 for the trade-marks VIRGIN VIE and VIRGIN VIE Design which cover the same or similar goods as those applied-for. However, in view of the Opponent’s extensive evidence of use and reputation of its VIRGIN trade-mark which is the subject of the nine registrations set out below for use in association with a variety of goods and services including sound recordings, entertainment services, alcoholic beverages, clothing, transportation and hospitality services, telecommunications goods and services, and financial, insurance and health services, I will focus my analysis on the likelihood of confusion between the Mark and the Opponent’s VIRGIN trade-

mark and VIRGIN VIE trade-marks. If the Opponent is not successful based on these marks, then it will not be successful based on any of its other marks. The full particulars of the VIRGIN, VIRGIN VIE and VIRGIN VIE design trade-mark registrations are set out at Schedule A.

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| TMA222,303 | TMA231,861 | TMA404,724 |
| TMA524,590 | TMA509,209 | TMA674,540 |
| TMA744,547 | TMA690,466 | TMA801,313 |

At the outset, for the purposes of this case, I will consider use of the VIRGIN MOBILE, VIRGIN ATLANTIC, VIRGIN RECORDS, VIRGIN BOOKS, VIRGIN BOOKS & MUSIC trade-marks to be use of the VIRGIN trade-mark.

[47] The test to determine the issue of confusion is set out in section 6(2) of the Act where it is stipulated that the use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would likely lead to the inference that the goods and services associated with those trade-marks are manufactured, sold or leased by the same person, whether or not the goods and services are of the same general class. In making such an assessment I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5): the inherent distinctiveness of the trade-marks and the extent to which they have become known; the length of time the trade-marks have been in use; the nature of the goods and services or business; the nature of the trade; and the degree of resemblance between the trade-marks in appearance, or sound or in the ideas suggested by them.

[48] These criteria are not exhaustive and different weight will be given to each one in a context specific assessment [see *Mattel, Inc supra* at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, (2011), 92 CPR (4th) 361 (SCC) at para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

Inherent Distinctiveness of the Trade-marks

[49] This factor favours the Opponent. As there is no connection between its VIRGIN and VIRGIN VIE trade-marks and the registered goods and services, its trade-marks are inherently distinctive. In contrast, the Mark has a much lower degree of inherent distinctiveness as it consists of two terms (EXTRA VIRGIN and MINERALS) which are very suggestive of ingredients of cosmetics and body care preparations, specifically, extra virgin olive oil and mineral pigments. While the Mark does not have a high degree of inherent distinctiveness it is not so descriptive that it lacks distinctiveness within the meaning of section 2 of the Act since it is created by the joinder of two abbreviated terms (EXTRA VIRGIN for extra virgin olive oil and MINERALS for mineral pigments) and is a play on words suggesting a high quality product.

Degree of Resemblance Between the Trade-marks

[50] The Opponent submits the following in its written argument (Opponent's Written Argument, para 78):

The Applicant has taken the distinctive element VIRGIN and combined that name with the words EXTRA and MINERALS, common English words that simply and clearly describe the Applicant's Goods.

[51] While the Mark incorporates the entirety of the trade-mark VIRGIN, this does not lead me to conclude that it resembles the Opponent's trade-marks VIRGIN, VIRGIN VIE or VIRGIN VIE Design in appearance, sound or in idea suggested to a significant extent. When the totality of the Mark is considered, it only shares a fair degree of resemblance in appearance and sound with the Opponent's trade-marks as consumers are likely to regard EXTRA VIRGIN as a unitary phrase. Further, I do not find that the term VIRGIN to be the most striking part of the Mark rather it is the combination of EXTRA VIRGIN with MINERALS. The ideas suggested by the marks are also different. By virtue of the extensive use and reputation of the VIRGIN brand, the Opponent's VIRGIN and VIRGIN VIE trade-marks suggest that the associated goods or services are owned by or affiliated with the Virgin brand associated with Sir Richard Branson. In contrast, the Mark suggests something to do with extra virgin olive oil and minerals along with a

play on words suggesting a high quality or pure product. Further underscoring the differences in ideas suggested, there is no evidence which suggests that a trade-mark that includes the term VIRGIN in a position other than as the first component of the trade-mark would call to mind the Opponent.

[52] To focus on the component VIRGIN in the analysis of the section 6(5)(e) factor as suggested by the Opponent, however, appears to involve a side-by-side comparison of the type warned against by the courts [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée* (2006) 49 CPR (4th) 401 (SCC) at para 20; *International Stars SA v Simon Chang Design Inc*, 2013 FC 1041 (CanLII) at para 9].

[53] As such, this factor favours the Applicant.

Extent Known and Length of Time in Use

[54] This factor significantly favours the Opponent whose evidence demonstrates that the VIRGIN brand has become well known, if not famous in Canada, as a result of its use in association with a variety of goods and services including: telecommunications services since 2005 (VIRGIN MOBILE), radio broadcasting since 2008 (VIRGIN RADIO), entertainment services since 2006 (VIRGIN FESTIVAL), musical recordings since the 1980s (VIRGIN RECORDS), retail store services since 1996 (VIRGIN STORES; VIRGIN BOOKS & MUSIC); flight services from May 2012 onwards (VIRGIN ATLANTIC) and books since the mid 1990s (VIRGIN BOOKS). I am also satisfied that the Opponent's evidence demonstrates that the VIRGIN brand is well known as an entrepreneurial brand.

[55] In contrast, the Mark was introduced in 2011 and sales at the Body Shop stores have been in excess of \$1.5 million Canadian (with more than 90,000 units of products sold) (Kennedy affidavit, para 10).

Nature of the Goods, Services, Business or Trade

[56] This factor favours the Opponent as the nature of the goods, business and channels of trade are all similar. Its VIRGIN VIE and VIRGIN VIE Design trade-marks are registered for identical or highly similar goods. Further, the VIRGIN ATLANTIC trade-mark is used in

association with lipstick, in part, to promote the VIRGIN ATLANTIC business. Even though the parties goods are available in different channels of trade in Canada with the Opponent's cosmetic goods under the VIRGIN VIE brand (in 2004-2005) and the bareMinerals Upper Class Red lipstick available exclusively on Virgin Atlantic airlines and the Applicant's goods being sold at The Body Shop stores, as there is no restriction in the statement of goods of either party there is the potential for overlap.

Opponent's family of marks

[57] As an additional surrounding circumstance, I have considered the Opponent's family or series of marks including VIRGIN RADIO, VIRGIN MOBILE, VIRGIN ATLANTIC, VIRGIN RECORDS, and VIRGIN FESTIVAL all of which the Opponent has shown use of [*McDonald's Corp v Yogi Yogurt Ltd* (1982), 66 CPR (2d) 101 (FCTD)].

[58] This factor, however, does not favour the Opponent since the Mark does not show the common characteristic of the family of marks. It does not begin with the word VIRGIN as do all the members of the family. As such, the existence of a family of trade-marks beginning with the VIRGIN component does not increase the likelihood of confusion between the Mark and the Opponent's VIRGIN trade-marks [*McDonald's Corp v Silverwood Industries Ltd* (1989), 24 CPR (3d) 207 (FCTD) at 217].

Surrounding Circumstances – Co-promotion and No Instances of Confusion

[59] The fact that the parties had a one-time co-promotion at which the VIRGIN MOBILE trade-mark, THE BODY SHOP trade-mark and the Mark were all featured (Kennedy affidavit, Exhibits F-G,K) is not a surrounding circumstance which favours either party since the co-promotion does not necessarily lead to the inference that there is or is not a reasonable likelihood of confusion.

[60] Ms. Kennedy's evidence is that the Applicant and Virgin Mobile co-produced an event dubbed "The Greatest Make-up Event" on September 23, 2011 in Toronto, Ontario at which samples were distributed (Kennedy affidavit, para 12 Exhibit G). The Greatest Make-up Event was advertised through direct mail, email, SMS messages and print invitations targeted at both

the Applicant's and Virgin Mobile's customers (Kennedy affidavit, para 13). This event was referenced in a number of periodicals and blogs including The Globe and Mail, Toronto Star, Toronto Sun, blogTO and UrbanMoms (Kennedy affidavit, para 16; Exhibit L).

Surrounding Circumstances – Discussion of VIRGIN Brand in Mattel Case

[61] In *Mattel, supra* the Supreme Court referred to the VIRGIN brand at paragraph 30 as set out below. I do not consider this to be a relevant surrounding circumstance as Binnie J does not find the brand famous or as possessing protean power, rather he states that the Virgin brand is one example that was raised in the arguments (**emphasis added**).

No doubt some famous brands possess protean power (it was submitted, for example, the distinctive red and white “*Virgin*” trade-mark has now been used in connection with such a diversity of wares and services that it knows virtually no bounds), but other famous marks are clearly product specific. “*Apple*” is said to be a well-known trade-mark associated in separate markets simultaneously with computers, a record label and automobile glass. The Board's conclusion that BARBIE's fame is limited to dolls and dolls' accessories does not at all mean that BARBIE's aura cannot transcend those products, but whether it is likely to do so or not in the context of opposition proceedings in relation to restaurant, catering and banquet services is a question of fact that depends on “all the surrounding circumstances” (s. 6(5)). **Neither the “*Virgin*” nor “*Apple*” situations are before us and I make no pronouncement on either except to note them as illustrations that surfaced in the course of argument.**

Conclusion

[62] The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the trade-mark EXTRA VIRGIN MINERALS on the Goods at a time when he or she has no more than an imperfect recollection of the Opponent's VIRGIN, VIRGIN VIE or VIRGIN VIE design trade-marks, and does not pause to give the matter any detailed consideration or scrutiny [*Veuve Clicquot, supra*].

[63] At para 279 of her affidavit, Ms. Wisener explains the Opponent's position with respect to the use of VIRGIN by other parties:

The public is used to the diversity of uses under the brand. New 'VIRGIN' uses are expected to originate from the Virgin Group. There is a strong likelihood that any third party use of marks consisting of or incorporating the Virgin Marks, such as EXTRA VIRGIN MINERALS will be confused with the goods and services of VEL...

[64] Through its evidence and submissions, the Opponent appears to be attempting to claim a monopoly over the word VIRGIN in any form. While I agree that the Opponent has developed an extensive reputation in this word, it has not acquired a reputation for the word VIRGIN to the extent that a consumer confronted by the Mark would believe that it indicates a link to the Opponent as opposed to the common meaning of the term "extra virgin" as it relates to olive oil.

[65] In conclusion, in view of the limited degree of resemblance between the Mark and the Opponent's VIRGIN and VIRGIN VIE trade-marks, as a matter of first impression, a consumer would not be likely to confuse the source of the Goods. Rather, I find that on a balance of probabilities it is not likely that a consumer would think that the Goods associated with the Mark were sold by or under license by the Opponent, or otherwise were affiliated with the Opponent. Accordingly, the section 12(1)(d) ground of opposition is rejected.

Remaining Grounds of Opposition

[66] The section 16(3)(a) and 16(3)(c) and section 2 grounds of opposition also turn on a determination of the likelihood of confusion between the Mark and the Opponent's VIRGIN trade-marks and trade-names. The section 16(3)(b) ground of opposition involves the following applications: application Nos. 1,332,099; 1,332,987; 1,376,988; 1,489,470; 1,460,883 1,332,103;1,332,104;1,332,989; 1,332,998; and 1,334,701 [see section 16(4) of the Act; see Schedule B for full particulars].

[67] Although the Opponent's evidence set out in Ms. Wisener's affidavit and detailed above is sufficient to meet its evidential burden with respect to each of these grounds of opposition, the

Applicant also meets its legal onus of proving on a balance of probabilities that there is no reasonable likelihood of confusion for the same reasons as set out with respect to the section 12(1)(d) ground of opposition. In this respect, I have considered the evidence of Ms. Singh even though it post dates the material date for these grounds of opposition since the Registrar may take into account such evidence insofar as it may indicate a situation existing at the material date [see, for example, *George Weston Ltd v Corporate Foods Ltd* (1988), 11 CPR (3d) 566 (TMOB)].

[68] At the hearing, the Opponent submitted that the section 2 ground of opposition could succeed and the application be refused if the Mark was found to lack distinctiveness. If I am wrong in concluding that the ground of opposition based on distinctiveness is limited to a consideration of likelihood of confusion with the Opponent's trade-mark, the distinctiveness ground would still not succeed as I find that the Mark is adapted to distinguish and actually distinguishes the source of the Goods. My reasons for this are expressed in paragraph 49 of this decision.

[69] In conclusion, the grounds of opposition based on sections 16(3)(a), 16(3)(b), 16(3)(c) and 2 are rejected.

Disposition

[70] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(8) of the Act.

Natalie de Paulsen
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule A

| Trade-mark | Appl. No. and Filing Date | Goods and Services |
|-------------------|----------------------------------|--|
| VIRGIN VIE | TMA 668,075 | Nail care preparations, namely, nail colour; soaps for personal use; non-medicated lip balm, moisturising creams, skin moisturizers and colognes. |
| VIRGIN VIE Design | TMA638,944 | Soaps, shampoos, perfumes, eau-de-cologne, toilet waters, essential oils, shaving preparations, after-shave lotions, shaving foams, non-medicated toilet preparations, non-medicated bath salts and bath oils; anti-perspirants, deodorants for use on the person, depilatories, dentifrices, mouth washes; cosmetics, namely, foundation, concealer, moisturiser, powder, blusher, eyeshadow, eyeliner, mascara, lip liner, lip pencil, lipstick, lip gloss; suntanning and suncreening preparations; preparations for the hair, hair lotions, hair sprays; dyes for the hair; non-medicated preparations for the care of the skin, hands, scalp and the body; skin cleansing preparations; creams and lotions for the skin; talcum powders; nail varnishes and nail varnish removers, nail preparations, namely nail color cleanser, cuticle softener, nail strengthener, nail varnish undercoat, nail varnish protector, nail varnish drying fluid, artificial nails and adhesives therefor, preparations for repairing artificial nails; artificial eyelashes and adhesives therefor; but not including virgin oils. |
| VIRGIN | TMA222,303 | GOODS: (1) Pre-recorded sound recordings in the form of discs. (2) T-shirts, board games, buttons, badges, concert, tour programs, artists' photographs, dolls, artists' pamphlets, artists' biographical materials, computer software, computer games, video games, video discs, compact discs, posters, sweat shirts, video cassettes. (3) Prerecorded tapes and cassettes. (4) Apparatus and instruments, all for recording and reproducing sound and images namely sound and image recording machines; radio and television apparatus and instruments both for reception and transmission; aerials; magnetic tapes for or bearing sound or video recordings, and cassettes and cartridges; all for use therewith; video accessories; sound recordings; video recordings; racks and cases adapted to hold recordings or to hold tapes; cinematographic and photographic films, all prepared for exhibition; photographic slide transparencies; calculators; |

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| | | <p>software and firmware for electronic games and for electronic amusement apparatus; firmware for computers; data bearing magnetic tapes, cassette tapes, cartridges, floppy discs and CD-ROM discs; electronic games and electronic games machines; hand-held electronic games machines; interactive software for computers, electronic games for electronic games machines; interactive software and games delivered by cable, satellite or via the telecommunications network.</p> <p>SERVICES: (1) Music publishing, broadcasting, operation of record stores, film distribution and production, television broadcasting, operation of bars and night clubs.</p> |
| VIRGIN | TMA231,861 | Pre-recorded tapes and cassettes. |
| VIRGIN | TMA404,724 | Dissemination of advertising matter and printed material; entertainment and entertainer services, namely, the production and performance of stage, screen and television entertainment; musical entertainment services; the services of organizing and conducting contests; video, film and recording services. |
| VIRGIN | TMA524,590 | Wines; potable and distilled spirits namely, vodka, gin, whisky, brandy, rum, tequila, slivovitz, aquavit, saki, arak, ouzo; and liqueurs. |
| VIRGIN | TMA509,209 | <p>GOODS: (1) Articles of under clothing, namely, pants; shirts; jackets; scarves; hats; articles of sports clothing, namely, track suits; caps; compact disks featuring music and sound recordings; computer software, namely, computer game software and computer software for educational computer games, for amusement arcade games, for calculators, and for global computer network access and for music products; stationery, namely, writing and note paper, postcards, pens; cups, mugs; leather goods, namely, handbags.</p> <p>SERVICES: (1) Transportation of goods and passengers by air; arranging the transport of passengers and goods by road, rail and air; tourist office services; travel agency services; transportation, accommodation and entertainment reservation services.</p> |

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| | | (2) Hotel reservation, restaurant, cafe and cafeteria services. |
| VIRGIN | TMA674,540 | <p>SERVICES:</p> <p>(1) Provision of entertainment, namely live performances by a musical band, organising and conducting stage shows, contests, dances and parties; concert and nightclub entertainment services; entertainer services in connection with music shows, dance shows, arts shows, cultural activities namely, organization and arrangements for concerts.</p> <p>(2) Entertainment services in the form of television programming, motion picture production, commercial musical services, namely the promotion of artists and their works to radio, television, film and press and the promotion of publishing rights of lyrical and written artistic works, provision of entertainment namely live performances by a musical band, theatrical productions and audio programming by means of radio and television; entertainment in the nature of ongoing television programmes and news shows; concert and nightclub entertainment services; organising and conducting stage shows, theatre productions, contests, dances and parties; casino services; entertainer services in connection with music shows, dance shows, arts shows; recording studio services for sound, films, videos and television; provision of recreational facilities including organisation of sporting events and competitions; music publishing services and book publishing.</p> |
| VIRGIN | TMA744,547 | <p>(1) Advertising services of real property in printed publications and over a global communication network on behalf of others; management of incentive and loyalty programmes and other promotional schemes including those that reward healthy lifestyle choices with bonuses and benefits; information and advisory services relating to all the aforesaid services</p> <p>(2) Health insurance services including bonus and reward payments made as part of the insurance service; private health insurance; medical insurance; provision of finance for health care; savings schemes relating to health and health care; savings schemes relating to health insurance; issuing of tokens of value in relation to incentive schemes; incentivised health and fitness programmes for signing up and for reaching/exceeding programme goals; real estate services; agency services for the leasing of real estate</p> |

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| | | <p>property; agency services for the selling on commission of real property; financial services relating to real estate property and buildings namely financial management in the fields of real estate property and buildings, financial investment in the fields of real estate property and buildings, mortgages/mortgage services; estate management services relating to transactions in real property; financing of property development; management of property; property portfolio management; information and advisory services relating to all the aforesaid services</p> <p>(3) Building construction; advisory services relating to development of property; advisory services relating to the renovation of property; commercial retail property development services; property development</p> <p>(4) Health assessments and health care risk assessments; advisory services relating to health; consultancy relating to health care; lifestyle counselling and consultancy; organisation, operation and supervision of incentivised health and fitness programmes for signing up and for reaching/exceeding programme goals</p> |
| VIRGIN | TMA690,466 | <p>GOODS:</p> <p>(1) Mobile telephones, telephones, modems, batteries; battery chargers; cigarette lighter adapters; dashboard mounts; hands-free headsets; carrying cases; belt clips.</p> <p>(2) Mobile telephones and accessories therefor, namely, batteries; battery chargers; cigarette lighter adapters; hands-free headsets; carrying cases and belt clips.</p> <p>SERVICES:</p> <p>(1) Telecommunications services, namely, transmission of images, audio, video via the telephone and the Internet; telecommunications services, namely, the transmission of voice, data and information namely, (1) the recording, storage and delivery of voice, text and electronic messages via wired and/or wireless telephone and Internet networks, (2) access, download and transmission of news, jokes, horoscopes, service updates via voice, text and electronic messages via wired and/or wireless telephone and Internet networks, (3) access, play and download of games via wired and/or wireless telephone and Internet networks; personal communications services; pager services; transmission or broadcast of news and information for others via telephone, including the Internet</p> <p>(2) Providing directory information via telephone.</p> <p>(3) Telecommunications services, namely, the transmission</p> |

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| | | <p>of images, audio, video via the telephone; telecommunication services, namely, the transmission of voice, data and information namely (1) the recording, storage and delivery of voice, text and electronic messages via wireless telephone (2) access, download and transmission of news, jokes, horoscopes, service updates via voice, text and electronic messages via wireless telephone; access, download and transmission of service updates via Internet networks (3) access, play and download of games via wireless telephone and Internet networks; personal communications services; pager services; transmission or broadcast of news and information for others via telephone.</p> |
| VIRGIN | TMA801,313 | <p>(1) Financial services, namely personal equity plans, tax advantaged personal savings, information relating to financial services, financial consultancy, credit and debit card services, financial management, mutual funds services, real estate, financial information and analysis, deposit taking, the provision of loans whether secured or unsecured, guarantees, performance bonds, issuing of letters of credit, clearance facilities, provision of smart cards, provision of stored value cards, foreign currency exchange services, the provision of domestic and international cash transmission and other payment or clearance facilities, savings, chequing, borrowing and deposit accounts for all currencies, the provision of custody services and the provision of advice in respect of any of the foregoing; life insurance, general insurance, health insurance, pensions, annuities, unit trusts, investment trusts, investment funds, open- or close-ended investment company services, namely creation, management and sale of collective investment schemes, investment services, namely, commodity and stock investment advice, investment management, investing funds for others and investment of real estate, inflation-indexed revenue investments in the field of bonds, stocks and real estate; fund investments; fund transfers; insurance consultancy; insurance underwriting; capital investment; issue of tokens of value; life insurance underwriting; mortgage services, namely origination, acquisition, servicing, securitization and brokerage of mortgage loans.</p> |

Schedule B

| Trade-mark (Appl No.) (Filing Date) | Goods and Services |
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| <p>VIRGIN 1,332,099 2007-01-19</p> | <p>GOODS: (1) Suits, stockings, articles of underclothing, shirts, blouses, slacks, trousers, skirts, dresses, jackets, overalls (being protective articles of clothing, not for protection against accident or injury), waistcoats, pantihose, knitted articles of clothing and articles of clothing made from knitted materials, scarves, hats, dressing gowns, bath robes, articles of sports clothing, sleeping garments; aprons, socks, belts, caps, gloves, tights, jeans, neckwear, swimwear and footwear, all being articles of clothing. (2) Magnetic tapes for or bearing sound or video recordings, cassettes and cartridges all for use therewith; video discs; compact discs; sound records in the form of discs, tapes or wires; cinematographic and photographic films all prepared for exhibitions; photographic slide transparencies; calculators, video games, electronic games, amusement apparatus and parts and fittings therefor; computers, computer software; magnetic tapes for recording computer programmes or data; electrically, magnetically and optically recorded data for computers; computer games and parts and fittings therefor; racks adapted to hold records or to hold tapes; cases, bags, holdalls, carriers and containers all adapted for carrying or for storing any of the aforesaid goods. (3) Apparatus and instruments, all for recording and reproducing sound and images; radio and television apparatus and instruments, all for reception and transmission; aerials; magnetic tapes for or bearing sound or video recordings, cassettes and cartridges, all for use therewith; video discs; parts and fittings for the aforesaid goods; sound recordings; video recordings; compact discs; racks and cases, all adapted to hold recordings or to hold tapes; cinematographic and photographic films, all prepared for exhibition; photographic slide transparencies; calculators; electronic games; electronic amusement apparatus; computer software and firmware, all for electronic games and for amusement apparatus; computers; computer software or firmware; data-bearing record carriers for computers, electronic games and electronic amusement apparatus; interactive software products for computers, electronic games or electronic amusement apparatus, distributed by magnetic, optical and electronic methods, including radio, television and satellite and broadcasting transmission and by transmission over telephone, cable, computer and optical fibre networks and transmission systems; interactive firmware and hardware products for computers, electronic games and electronic amusement apparatus, all distributed on magnetic, optical and electronic media; coin operated entertainment apparatus and</p> |

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| | <p>instruments; CD-ROM discs, apparatus and instruments, all for entertainment; parts and fittings for the aforesaid goods.</p> <p>(4) Clocks, horological and chronometric instruments, goods in precious metals or coated therewith; parts and fittings for all the aforesaid goods.</p> <p>(5) Printed music, holographs, photographs, posters, books, magazines (publications); cardboard, cardboard articles, paper and paper articles</p> <p>(6) Writing instruments; greetings cards; stationery; table linen, table mats, table napkins, table cloths, coasters, decanter mats, dish mats, all made of paper; playing cards.</p> <p>(7) Articles of luggage, trunks, bags, briefcases, wallets, purses, umbrellas, parasols; parts and fittings for all the aforesaid goods; walking sticks.</p> <p>SERVICES:</p> <p>(1) Transportation of goods and passengers by road, rail, air and sea; arranging the transport of passengers and goods by road, rail, sea, and by air; tourist office; travel agency; arranging and organising of tours; reservation services.</p> <p>(2) Vending machine rental; typesetting and printing; photography services; computer programming and computer design; artwork services; club, hotel, resort hotel, hotel reservation, restaurant, public house, cafe and cafeteria services; arranging, organising and providing facilities for exhibitions and for conferences.</p> |
| <p>VIRGIN 1,332,987 2007-01-26</p> | <p>Mineral waters, aerated waters; fruit juices; non-alcoholic beverages, namely carbonated soft drinks, fruit drinks.</p> |
| <p>VIRGIN FESTIVAL 1,376,988 2007-12-21</p> | <p>GOODS:</p> <p>(1) paper items, namely photographic prints, photographs, guides, shirts, t-shirts, sweatshirts, jackets, coats, ball caps, mobile phones, mobile phone accessories, namely chargers, headsets, earphones, stickers and cases, sound and video recordings of musical performances for downloading onto phones, carry-all bags</p> <p>SERVICES:</p> <p>(1) organization, promotion and production of entertainment and events for others, namely the development, production, distribution, transmission and broadcasting of television shows, personal appearances by musical artists, pre-recorded messages by telephone</p> <p>(2) Theatrical performances, concerts, live performances musical entertainment, namely musical concerts, orchestra performances and musical festivals; provision of music, providing information on recreational events, entertainment services namely, music festivals and concerts.</p> |

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| <p>VIRGIN SIGNATURE & Design</p> <p>1,332,103 2007-01-19</p> | <p>GOODS:</p> <p>(1) Suits, articles of underclothing, shirts, blouses, trousers, skirts, dresses, tights, stockings, jackets, overalls, waistcoats, knitted articles of clothing, articles of clothing made from knitted materials, scarves, hats, dressing gowns, bathrobes, articles of sports clothing and sleeping garments; aprons, belts, caps, gloves, jeans, neckwear; swimwear and footwear, all being articles of clothing.</p> <p>(2) Magnetic tapes for or bearing sound or video recordings, cassettes and cartridges all for use therewith; video discs; compact discs; sound records in the form of discs, tapes or wires; cinematographic and photographic films all prepared for exhibitions; photographic slide transparencies; calculators, video games, electronic games, amusement apparatus and parts and fittings therefor; computers, computer software; magnetic tapes for recording computer programmes or data; electrically, magnetically and optically recorded data for computers; computer games and parts and fittings therefor; racks adapted to hold records or to hold tapes; cases, bags, holdalls, carriers and containers all adapted for carrying or for storing any of the aforesaid goods.</p> <p>(3) Apparatus and instruments, all for recording and reproducing sound and images; radio and television apparatus and instruments, all for reception and transmission; aerials; magnetic tapes for or bearing sound or video recordings, cassettes and cartridges, all for use therewith; video discs; parts and fittings for the aforesaid goods; sound recordings; video recordings; compact discs; racks and cases, all adapted to hold recordings or to hold tapes; cinematographic and photographic films, all prepared for exhibition; photographic slide transparencies; calculators; electronic games; electronic amusement apparatus; computer software and firmware, all for electronic games and for amusement apparatus; computers; computer software or firmware; data-bearing record carriers for computers, electronic games and electronic amusement apparatus; interactive software products for computers, electronic games or electronic amusement apparatus, distributed by magnetic, optical and electronic methods, including radio, television and satellite and broadcasting transmission and by transmission over telephone, cable, computer and optical fibre networks and transmission systems; interactive firmware and hardware products for computers, electronic games and electronic amusement apparatus, all distributed on magnetic, optical and electronic media; coin operated entertainment apparatus and instruments; CD-ROM discs, apparatus and instruments, all for entertainment; parts and fittings for the aforesaid goods.</p> <p>(4) Clocks, horological and chronometric instruments, articles made of precious metals or coated therewith; parts and fittings for all the aforesaid goods.</p> <p>(5) Printed music, holographs, photographs, posters, books, magazines (publications); cardboard, cardboard articles, paper and paper articles.</p> <p>(6) Greeting cards, postcards, writing instruments, stationery, ordinary</p> |
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| | <p>playing cards; table linen, table mats, table napkins, table cloths, coasters, decanter mats, dish mats, all made of paper.</p> <p>(7) Articles of luggage, trunks, bags, travelling bags, handbags, briefcases, wallets, purses, umbrellas, parasols; parts and fittings for all the aforesaid goods; walking sticks.</p> <p>SERVICES:</p> <p>(1) Transportation of goods and passengers by road, rail, air and sea; arranging the transport of passengers and goods by road, rail, sea, and air; tourist office; travel agency; arranging and organising of tours; reservation services.</p> <p>(2) Vending machine rental; typesetting and printing; photography services; computer programming and computer design; artwork services; club, hotel, resort hotel, hotel reservation, restaurant, public house, cafe and cafeteria services; arranging, organising and providing facilities for exhibitions and for conferences.</p> |
| <p>VIRGIN SIGNATURE & Design 1,332,104 2007-01-19</p> | <p>GOODS:</p> <p>(1) Suits, articles of underclothing, shirts, blouses, trousers, skirts, dresses, tights, stockings, jackets, overalls, waistcoats, knitted articles of clothing, articles of clothing made from knitted materials, scarves, hats, dressing gowns, bathrobes, articles of sports clothing and sleeping garments; aprons, belts, caps, gloves, jeans, neckwear; swimwear and footwear, all being articles of clothing.</p> <p>(2) Magnetic tapes for or bearing sound or video recordings, cassettes and cartridges all for use therewith; video discs; compact discs; sound records in the form of discs, tapes or wires; cinematographic and photographic films all prepared for exhibitions; photographic slide transparencies; calculators, video games, electronic games, amusement apparatus and parts and fittings therefor; computers, computer software; magnetic tapes for recording computer programmes or data; electrically, magnetically and optically recorded data for computers; computer games and parts and fittings therefor; racks adapted to hold records or to hold tapes; cases, bags, holdalls, carriers and containers all adapted for carrying or for storing any of the aforesaid goods.</p> <p>(3) Apparatus and instruments, all for recording and reproducing sound and images; radio and television apparatus and instruments, all for reception and transmission; aerials; magnetic tapes for or bearing sound or video recordings, cassettes and cartridges, all for use therewith; video discs; parts and fittings for the aforesaid goods; sound recordings; video recordings; compact discs; racks and cases, all adapted to hold recordings or to hold tapes; cinematographic and photographic films, all prepared for exhibition; photographic slide transparencies; calculators; electronic games; electronic amusement apparatus; computer software and firmware, all for electronic games and for amusement apparatus; computers; computer software or firmware; data-bearing record carriers</p> |

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| | <p>for computers, electronic games and electronic amusement apparatus; interactive software products for computers, electronic games or electronic amusement apparatus, distributed by magnetic, optical and electronic methods, including radio, television and satellite and broadcasting transmission and by transmission over telephone, cable, computer and optical fibre networks and transmission systems; interactive firmware and hardware products for computers, electronic games and electronic amusement apparatus, all distributed on magnetic, optical and electronic media; coin operated entertainment apparatus and instruments; CD-ROM discs, apparatus and instruments, all for entertainment; parts and fittings for the aforesaid goods.</p> <p>(4) Watches, clocks, jewellery, imitation jewellery, horological and chronometric instruments, articles made of precious metals or coated therewith; parts and fittings for all the aforesaid goods.</p> <p>(5) Printed music, holographs, photographs, posters, books, magazines (publications); cardboard, cardboard articles, paper and paper articles.</p> <p>(6) Greeting cards, postcards, writing instruments, stationery, ordinary playing cards; table linen, table mats, table napkins, table cloths, coasters, decanter mats, dish mats, all made of paper.</p> <p>(7) Articles of luggage, trunks, bags, travelling bags, handbags, briefcases, wallets, purses, umbrellas, parasols; parts and fittings for all the aforesaid goods; walking sticks.;</p> <p>(8) Mineral waters, aerated waters; fruit juices; non-alcoholic beverages, namely carbonated soft drinks, fruit drinks.</p> <p>SERVICES:</p> <p>(1) Transportation of goods and passengers by road, rail, air and sea; arranging the transport of passengers and goods by road, rail, sea, and air; tourist office; travel agency; arranging and organising of tours; reservation services.</p> <p>(2) Vending machine rental; typesetting and printing; photography services; computer programming and computer design; artwork services; club, hotel, resort hotel, hotel reservation, restaurant, public house, cafe and cafeteria services; arranging, organising and providing facilities for exhibitions and for conferences.</p> |
| <p>VIRGIN SPRING 1,332,998 2007-01-29</p> | <p>Mineral waters, aerated waters; fruit juices; non-alcoholic beverages, namely carbonated soft drinks, fruit drinks.</p> |
| <p>VIRGIN SIGNATURE & Design 2007-01-26 1,332,989</p> | <p>Mineral waters, aerated waters; fruit juices; non-alcoholic beverages, namely carbonated soft drinks, fruit drinks.</p> |

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| <p>VIRGIN VIE AT HOME 1,334,701 2007-02-09</p> | <p>GOODS: (1) Beauty care products; perfumes, cosmetics, make up; hair care preparations; skin care preparations, sun care preparations; nail care products; nail varnishes and nail polishes; powder compacts; lipsticks; lip gloss; nail varnish remover; cotton wool balls for use in removing and applying cosmetics; make-up pads; make-up powder and foundation; facial wipes impregnated with cosmetics; moisturisers; beauty care preparations, body care preparations, essential oils for personal use; soaps; antiperspirants; after shave lotions; eau de cologne; soaps; preparations and products for removing make-up; toiletries; eau de toilette; antiperspirants; deodorants for personal care; hair care preparations; skin care preparations; lotions, creams and conditioners; shampoos; conditioners; beauty masks; cream, masks, oil, powder and scrubs; hand and body lotions; dentifrices; shaving preparations, dyes for hairs; bath preparations, namely, beads, crystals, foam, gels, oil and powder; scented body sprays; after-shave lotions; pre-electric shaving preparations; jewellery and imitation jewellery; cosmetic containers of precious and semi-precious metals; precious metals and their alloys and goods in precious metals or coated therewith; semi-precious and precious stones; watches, clocks, parts and fittings for all the aforesaid goods.</p> <p>SERVICES: (1) Retail services; on-line retail services; retail services from the home; retail services via a printed catalogue; organisation of parties for retail purposes; business consultancy services; business advisory services; advertising services; advertising services provided over the internet; rental of advertising space on a website.</p> |
| <p>VIRGIN MOBILE SUPERTAB 1,489,470; 2010-07-21</p> | <p>Telecommunications services, namely, a reward program for the promotion and sale of telecommunications wares and services; telecommunication services, namely, management of payment processes and providing pricing plans, rate plans and rate plan bundles for telecommunications.</p> |
| <p>VIRGIN MONEY 1,460,883 2009-11-27</p> | <p>Financial services, namely personal equity plans, tax advantaged personal savings, information relating to financial services, financial consultancy, credit and debit card services, financial management, mutual funds services, real estate, financial information and analysis, deposit taking, the provision of loans whether secured or unsecured, guarantees, performance bonds, issuing of letters of credit, clearance facilities, provision of smart cards, provision of stored value cards, foreign currency exchange services, the provision of domestic and international cash transmission and other payment or clearance facilities, savings, chequing, borrowing and deposit accounts for all currencies, the provision of custody services and the provision of advice in respect of any of the foregoing; life insurance, general insurance,</p> |

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| | health insurance, pensions, annuities, unit trusts, investment trusts, investment funds, open- or close-ended investment company services, namely creation, management and sale of collective investment schemes, investment services, namely, commodity and stock investment advice, investment management, investing funds for others and investment of real estate, inflation-indexed revenue investments in the field of bonds, stocks and real estate; fund investments; fund transfers; insurance consultancy; insurance underwriting; capital investment; issue of tokens of value; life insurance underwriting; mortgage services, namely origination, acquisition, servicing, securitization and brokerage of mortgage loans. |
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