



LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 39

Date of Decision: 2021-03-01

IN THE MATTER OF AN OPPOSITION

Fruit of the Loom, Inc.	Opponent
and	
LRC Products Limited	Applicant
1,649,383 for FUNDAWEAR	Application

INTRODUCTION

[1] Fruit of the Loom, Inc. (the Opponent) opposes registration of the trademark FUNDAWEAR (the Mark), which the subject of application No. 1,649,383 by LRC Products Limited (the Applicant).

[2] The application for the Mark is based on proposed use in association with numerous goods including “underwear”. The full statement of goods (the Goods) is set out in Schedule A to this decision.

[3] The opposition is primarily based on an allegation that the Mark is confusing with the Opponent’s prior use and registration of the trademark UNDERWEAR THAT’S FUN TO WEAR in association with goods including “underwear”.

[4] For the reasons that follow, the opposition is rejected.

THE RECORD

[5] The application for the Mark was filed on October 25, 2013, claiming priority to an application filed in the United Kingdom on April 26, 2013. The application was advertised for opposition purposes in the *Trademarks Journal* of February 3, 2016.

[6] On April 4, 2016, the Opponent filed a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). The grounds of opposition are based on registrability under section 12(1)(d), entitlement under section 16(3), and distinctiveness under section 2 of the Act, all of which turn on the issue of a likelihood of confusion between the applied for Mark and the Opponent's trademark. The Opponent has also raised grounds of opposition based on non-compliance with sections 30(a), (e), and (i) of the Act. As the Act was amended on June 17, 2019, all references in this decision are to the Act as amended, with the exception of references to the grounds of opposition (see section 70 of the Act, which provides that section 38(2) of the Act as it read prior to June 17, 2019 applies to applications advertised before this date).

[7] The Applicant denied all the grounds of opposition in a counter statement served on the Opponent on August 15, 2016.

[8] Both parties filed evidence. Neither party filed written representations, and only the Opponent was represented at a hearing.

OVERVIEW OF THE EVIDENCE

[9] The evidence of record is briefly summarized below. Pertinent portions of the evidence are discussed further in the analysis of the grounds of opposition.

Opponent's evidence

[10] The Opponent filed the affidavit of T. Leslie Dooley (sworn December 6, 2016), the Vice President, Assistant General Counsel and Secretary of the Opponent.

[11] Mr. Dooley states that the Opponent owns the registered trademark UNDERWEAR THAT'S FUN TO WEAR, and that it is used in association with the Opponent's Underoos®

products, which can generally be described as underwear top and bottom sets that are marketed to both adults and children (para 2). Exhibit A contains representative images of the Opponent's products sold in Canada bearing the Opponent's trademark on the product packaging (para 3). Exhibit B is a list of sales of the Opponent's products bearing the Opponent's trademark on its packaging for the time period of July 2015 to March 2016 (para 4).

Applicant's evidence

[12] The Applicant filed the affidavit of Cameron Weir, sworn April 20, 2018 (the Weir affidavit), the affidavit of Gay Owens, sworn April 18, 2018 (the Owens affidavit), and the affidavit of Michael S. Duchesneau, sworn April 20, 2018 (the Duchesneau affidavit).

The Weir affidavit

[13] Mr. Weir is Senior Counsel of Reckitt Benckiser (Canada) Inc. Both Reckitt Benckiser (Canada) Inc. and the Applicant are wholly owned subsidiaries of Reckitt Benckiser Group plc (collectively RB Group), a British multinational consumer goods company producing health, hygiene and home products (paras 1, 2, 3).

[14] Mr. Weir provides information on the RB Group's DUREX brand of sexual wellbeing products, which include condoms, lubricants, massage oils, gels, contraceptives, and sex toys (paras 4-8). Mr. Weir states that DUREX branded products are marketed to sexually active adult consumers, and are typically sold in pharmacies, the pharmaceutical aisle of department stores, and the personal care area of supermarkets, as well as in convenience stores and stores dedicated to the sale of sexual well-being products (paras 9, 10).

[15] Mr. Weir states that the Mark is intended to be used in Canada as a sub-brand of the DUREX brand of sexual well-being products, and as a result, is also intended to be targeted to adult consumers (para 11).

The Owens affidavit

[16] Ms. Owens is employed as a trademark searcher with the agent for the Applicant. Ms. Owens obtained printouts of the particulars of two Canadian trademark registrations standing in the name of third parties (paras 3, 4).

The Duchesneau affidavit

[17] Mr. Duchesneau is employed as a law clerk with the agent for the Applicant. Mr. Duchesneau accessed and obtained screenshots of various third party websites that allegedly offer clothing products to Canadian consumers in association with “FUN-formative terms” (paras 2-8), as well as websites allegedly offering clothing products to Canadian consumers and displaying the term “fun to wear” (paras 9-15). Mr. Duchesneau provided printouts of archived versions of some of these webpages from the Internet Archive Wayback Machine, as well as printouts from the website *www.alexa.com* which is described as a website traffic ranking tool (paras 17-25).

[18] In reaching my decision I have considered all the evidence in the file. However, only those portions of the evidence that are directly relevant to my findings are discussed.

ONUS AND MATERIAL DATES

[19] The Applicant bears the legal onus of establishing, on a balance of probabilities, that the application complies with the requirements of the Act. This means that if a determinate conclusion cannot be reached in favour of the Applicant after a consideration of all of the evidence, then the issue must be decided against the Applicant. 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 [*John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

[20] The material dates that apply to the grounds of opposition pleaded are:

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

- Sections 38(2)(b)/12(1)(d) - 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)];
- Sections 38(2)(c)/16(3) - the priority filing date of the application [*Shell Canada Limited v P T Sari Incofood Corp* 2005 FC 1040];
- Sections 38(2)(d)/2 – the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

ANALYSIS OF THE GROUNDS OF OPPOSITION

Section 12(1)(d) ground of opposition

[21] The Opponent has pleaded that the Mark is not registrable in association with the Goods as the Mark is confusing with the Opponent's registered trademark UNDERWEAR THAT'S FUN TO WEAR (TMA855,977). I have exercised my discretion to check the Register and confirm that this registration remains extant [*Quaker Oats Co Ltd 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.

Test for confusion

[22] The test for confusion is one of first impression and imperfect recollection. In determining whether two trademarks are confusing, all the surrounding circumstances should be considered, including those listed in section 6(5) of the Act: the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks 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 trademarks in appearance, or sound or in the ideas suggested by them. These criteria are not exhaustive and different weight will be given to each one in a context specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 (SCC) at para 54].

Inherent distinctiveness

[23] The Opponent's trademark UNDERWEAR THAT'S FUN TO WEAR possesses a limited degree of inherent distinctiveness as it is a slogan that is suggestive of its associated

goods, specifically underwear. Further, generally speaking, slogans are considered to constitute relatively weak marks [*RE/MAX, LLC v GMAX WORLD REALTY INC.*, 2017 TMOB 126].

[24] The Applicant's trademark FUNDAWEAR is a coined word. That being said, I consider the Mark to be fairly suggestive of the goods "underwear" insofar as the Mark would likely be seen as a portmanteau of the words "FUN" and "UNDAWEAR", a misspelling of "underwear". Accordingly, I find this factor only slightly favours the Applicant.

Extent known and length of time in use

[25] The application for the Mark is based on proposed use, and the Applicant has not adduced any evidence that use of the Mark has commenced since the date of filing of the application.

[26] With respect to the Opponent's trademark, the Dooley affidavit contains "representative images" of the Opponent's products (underwear top and bottom sets) sold in Canada bearing the mark directly under its trademark Underoos® on product packaging (Exhibit A), and a list of sales of the Opponent's product bearing the Opponent's trademark for the period between July 2015 to March 2016 (Exhibit B). In reviewing Exhibit B, I note that 24 orders (displaying 24 unique order numbers) appear to have been made, with a total of approximately 50 products sold. No additional sales information from any other time period is provided.

[27] I find that the Opponent's evidence establishes only limited use of its trademark, as the sales information provided is very narrow. Moreover, there is no evidence of promotional efforts or advertising expenditures. While the Opponent's registration for the trademark claims use in Canada since at least as early as December 31, 1980, even if I was to assume *de minimis* use, it is well established that *de minimis* use does not support a conclusion that a trademark has become known to any significant extent, nor that a trademark has necessarily been used continuously since the date stated [*Krauss-Maffei Wegmann GmbH & Co KG v Rheinmetall Defence Electronics GmbH*, 2017 TMOB 50]. Accordingly, I find that these factors do not significantly favour either party.

Nature of the goods, services or business; and the nature of the trade

[28] It is the Applicant's statement of goods as defined in its application compared to the Opponent's goods as set out in its registration that govern my determination of this factor [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc.* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)]. However, these statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. The evidence of the parties' actual trades is useful in this respect [*McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA) at 169].

[29] With respect to the nature of the goods, there is some direct overlap insofar as T-shirts and underwear appear in the statement of goods of both parties. While the Applicant (through the Weir affidavit) indicates that the intention is for the Mark to be used in Canada as a sub-brand of the DUREX brand of sexual well-being products, there is no such restriction in the statement of goods. Similarly, while the majority of the Goods listed in the subject application are sexual well-being products and thus adult in nature, the Goods, particularly T-shirts and underwear, are not restricted to adults. The Opponent's goods are marketed to both adults and children (Dooley affidavit, para 2; Exhibit A).

[30] With respect to the channels of trade, the Weir affidavit suggests that the Goods would likely be sold in the same channels as the DUREX branded products, including pharmacies, the pharmaceutical aisle of department stores, the personal care area of supermarkets, and stores specializing in the sale of sexual well-being products (Weir affidavit, para 10). However, the Applicant's application contains no restrictions regarding the channels of trade. Similarly, there are no restrictions on the channels of trade listed in the Opponent's registration.

[31] Accordingly, absent any restrictions regarding the parties' channels of trade, given that the T-shirts and underwear of both parties could potentially target the same consumer, it is possible that the channels of trade for these goods could overlap.

Degree of resemblance

[32] In most instances, the degree of resemblance between the trademarks in appearance or sound or in the ideas suggested is the dominant factor and other factors play a subservient role in the overall surrounding circumstances [*Beverly Bedding & Upholstery Co v Regal Bedding & Upholstery Ltd* (1980), 47 CPR (2) 145, conf. 60 CPR (2d) 70 (FCTD)]. This principle was upheld by the Supreme Court of Canada in *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361.

[33] The preferable approach when comparing trademarks is to begin by determining whether there is an aspect of the marks that is particularly striking or unique [*Masterpiece, supra* at para 64].

[34] In the present case, I find that there is nothing particularly striking or unique about the Opponent's trademark UNDERWEAR THAT'S FUN TO WEAR given that the word UNDERWEAR describes those goods and in combination with THAT'S FUN TO WEAR forms a suggestive phrase or slogan.

[35] With respect to the Applicant's trademark FUNDAWEAR, there is nothing particularly striking about the constituent elements FUN and UNDAWEAR (I do not consider the misspelling of this element to be significant). Rather, it is the blending of these elements that is the most striking or unique part of the trademark.

[36] From a visual perspective, while the parties' marks share some of the same or similar elements, namely the words "FUN" and "UNDERWEAR/UNDAWEAR", the difference in the length and structure of the marks – a full phrase versus a single coined term – significantly distinguishes the marks. Similarly, while the marks have some phonetic similarities insofar as they share some of the same elements and sounds, the contrast in the structure and length of the marks results in significant differences when sounded. Accordingly, I find the marks to be more different than alike in both appearance and sound.

[37] The parties' trademarks do share similarities in the ideas suggested, with both connoting that their respective underwear is fun and/or fun to wear. However, there can be no monopoly in

this idea [*American Assn of Retired Persons v Canadian Assn of Retired Persons/Assoc Canadienne des Individus Retraites* (1998), 84 CPR (3d) 198 at para 34 (FCTD)].

Surrounding circumstance – state of the register and marketplace

[38] The Applicant, through the Owens affidavit, has filed copies of the particulars of registrations for the trademarks FUNDERWEAR (TMA689,375) and NOZONE FUNWEAR & DESIGN (TMA583,689), though no evidence of marketplace use is provided. I consider the existence of these two registrations to be insufficient to infer widespread use of the words “fun”, “wear”, or “underwear” in association with clothing in the marketplace.

[39] The Duchesneau affidavit provides screenshots from eight third-party websites described as “offering clothing products to Canadian consumers in association with FUN- formative terms”, including FUNDIES, FUNDERWEAR, and FUN WEAR. Of these websites, I note that only three of the corresponding businesses appear to be based in Canada. While screenshots for the remaining websites indicate that shipping to Canada is available, there is no indication of the extent to which (if at all), any such shipping may have occurred.

[40] The Duchesneau affidavit also provides screenshots from 14 third-party websites described as “offering clothing products to Canadian consumers” and displaying the term “fun to wear” on the webpages. I note that screenshots for approximately six of the websites indicate that shipping to/in Canada is available, though there is no indication of the extent to which any such shipping may have occurred.

[41] While Mr. Duchesneau provides traffic data information for some of these websites (including the percentage of visitors from Canada and the website rank in Canada) using the ALEXA Website Traffic Ranking Tool, I am of the view that there is insufficient information on the reliability of this information as only a screenshot of the “About Us” page of the ALEXA website is provided, which sets out limited information on its data (and which is printed in a very small font making it difficult to read) (Exhibit HH). In any event, if I was to consider the information provided from the website traffic ranking tool, I note that only three websites (*gapcanada.ca*, *bananarepublic.ca* and *oldnavy.ca*) have a significant percentage of visitors from Canada. On my review of the screenshots for these websites (Exhibits N, O, P, T), the term “fun

to wear” as it appears on these pages is barely legible (as it was printed in very small font) and the words do not appear to be emphasized in any way, but instead simply included in a paragraph at the bottom of the webpage.

[42] Accordingly, I do not find that this factor assists the Applicant.

Conclusion

[43] The question posed by section 6(2) of the Act is whether customers of the Goods provided with the Mark would believe that these goods are provided, authorized, or licensed by the Opponent owing to its trademark UNDERWEAR THAT’S FUN TO WEAR. I have assessed this as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the Mark, at a time when he or she has no more than an imperfect recollection of the Opponent’s trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks.

[44] Having regard to section 6(5), I find that the Applicant has met the legal onus on it to show that, on a balance of probabilities, there is no reasonable likelihood of confusion between the Mark and the Opponent’s trademark UNDERWEAR THAT’S FUN TO WEAR. In so finding, I have had particular regard to the differences between the parties’ marks in appearance and sound, the limited inherent distinctiveness of the Opponent’s trademark, and the limited evidence of acquired distinctiveness and length of time in use of the Opponent’s trademark. Accordingly, this ground of opposition is rejected.

Section 16(3) grounds of opposition

[45] The Opponent has pleaded that the Applicant is not the person entitled to registration of the Mark in association with the Goods since, as of the date of filing of the application and at all relevant times thereafter, the Mark was confusing with the Opponent’s trademark and trade name which has been previously used and registered in Canada.

[46] I note that the Opponent’s evidence does not show any trade name use of UNDERWEAR THAT’S FUN TO WEAR; thus the ground of opposition based on prior use by the Opponent of a trade name under section 16(3)(c) of the Act is dismissed.

[47] To meet its initial burden under section 16(3)(a) of the Act, the Opponent must show that the trademark UNDERWEAR THAT’S FUN TO WEAR was used in Canada prior to the priority filing date of the application (namely April 26, 2013) and had not been abandoned at the date of advertisement of the application for the Mark (February 3, 2016) [section 16(5) of the Act].

[48] I find that the Opponent has failed to meet its burden under this ground as the evidence does not establish use of the Opponent’s trademark in Canada prior to April 26, 2013. The Dooley affidavit simply provides undated “representative images” of the Opponent’s products sold in Canada, without any indication whether these images are in fact representative of the relevant period, and the only sales information provided (July 2015 to March 2016) falls outside the material period. Finally, any reference to use in the Opponent’s registration is not sufficient to satisfy the Opponent’s evidential burden under section 16(3)(a) of the Act [*Roox, Inc v Edit-SRL* (2002), 23 CPR (4th) 265 (TMOB)]. Accordingly, this ground of opposition is rejected.

Section 2 ground of opposition

[49] The Opponent has pleaded that the Mark is not distinctive of the Applicant’s Goods, nor is it adapted to distinguish the Applicant’s Goods from the goods and services of others, including the goods and services of the Opponent.

[50] To meet its evidential burden with respect to this ground, the Opponent must show that as of the date of filing of the opposition (April 4, 2016), the Opponent’s trademark had become known in Canada sufficiently to negate the distinctiveness of the Mark [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD) at 58].

[51] In view of the Opponent’s evidence summarized above, I am not satisfied that the Opponent has met its initial burden. In so finding, I have had regard to the fact that the Opponent has provided limited sales information (less than a year of sales) indicating modest sales, and has provided no evidence of promotional efforts or advertising expenditures for its goods in association with the Opponent’s trademark. Further, any reference to use claimed in the Opponent’s registration is also not sufficient to satisfy the Opponent’s evidential burden under section 2 of the Act [*Roox, supra*]. Accordingly, this ground of opposition is rejected.

Grounds of opposition under section 30 - summarily dismissed

[52] The Opponent has not met its initial burden with respect to the grounds of opposition based on sections 30(a), 30(e), and 30(i) of the Act.

[53] The Opponent has pleaded that contrary to section 30(a), the statement of goods in the application is not set out in ordinary commercial terms or in sufficient detail to enable the average person or consumer to ascertain the nature or scope of the goods. However, no evidence or argument was filed in support of this ground of opposition [*McDonald's Corporation v MA Comacho-Saldana International Trading Ltd c/o/b/a Macs International* (1984), 1 CPR (3d) 101 (TMOB) at 104].

[54] The Opponent has pleaded that contrary to section 30(e), the Applicant had used the Mark in Canada with the Goods prior to the applicable filing date, and/or the Applicant had no intention as of the applicable filing date and has no intention to use the Mark in Canada with the Goods by itself or through a licensee or by itself and through a licensee. However, no evidence or argument was filed in support of this ground of opposition.

[55] The Opponent has pleaded that contrary to section 30(i), the Applicant could not have been satisfied that it was entitled to use the Mark in Canada in association with the Goods in the application as:

- i. The Mark was and is confusing with the Opponent's trademark that had been previously used and registered in Canada;
- ii. As prohibited by section 7 of the Act, 1) use of the Mark would cause or be likely to cause confusion with the goods and business of the Opponent; and 2) use of the mark is contrary to honest industrial or commercial usage in Canada;
- iii. Use of the Mark in Canada is likely to have the effect of depreciating the value of the goodwill attached to the Opponent's trademark, which is registered in Canada.

[56] Section 30(i) of the Act requires that an applicant declare itself satisfied that it is entitled to use the applied-for mark. The jurisprudence suggests that non-compliance with 30(i) can be found in one of two circumstances. The first circumstance is where there are exceptional circumstances such as bad faith which render the applicant's statement that it is satisfied that it is entitled to use the applied-for mark untrue [*Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR

(2d) 152 (TMOB) at 155]. In this case, there is no evidence of bad faith on the part of the Applicant. The second circumstance is where there is a *prima facie* case of non-compliance with a federal statute under the general principle that the Registrar cannot condone the registration of a mark if the applicant's use of the mark would violate Federal legislation including the Act [*Interactiv Design Pty Ltd. v Grafton-Fraser Inc.* (1998), 87 CPR (3d) 537 (TMOB) at 542-543; *Bojangles' International, LLC v Bojangles Café*, 2004 CanLII 71764 (TMOB) cited in *Dairy Processors Association of Canada v Dairy Farmers of Canada*, 2014 FC 1054] with the following caveat: section 30(i) is not a "catch all clause". Therefore, a section 30(i) ground of opposition based on an allegation that the applicant is not entitled to register the applied-for trademark or that it is not distinctive or is not registrable will be declared invalid as these are duplicative of grounds of opposition as those set out at sections 38(2)(b)-2(d) respectively [*Ali Baba's Middle Eastern Cuisine Ltd v Nilgun Dardere*, 2012 TMOB 223 at para 15]. The first prong of the section 30(i) ground pleaded by the Opponent is summarily dismissed on the basis that it is duplicative of grounds of opposition set out in the section 16 and section 12(1)(d) grounds of opposition.

[57] With respect to the combination of section 30(i) with section 7 of the Act, even if I were to assume that this comprises a valid ground of opposition, I would not find the Opponent has met its initial burden in establishing all three elements required to show a violation of section 7(b) of the Act [as set out in *Ciba-Geigy Canada Ltd v Apotex Inc*, 1992 CanLII 33 (SCC), [1992] 3 SCR 120 at para 33 cited by *Pharmacommunications Holdings Inc v Avencia International Inc*, 2008 FC 828 at para 41].

[58] Similarly, assuming that the combination of section 30(i) with section 22 of the Act comprises a valid ground of opposition, I would not find that the Opponent has provided evidence of the four elements required for section 22 [*Veuve Cliquot Ponsardin v Boutiques Cliquot Ltee* (2006), 2006 SCC 23 (CanLII), 49 CPR (4th) at para 46] given the limited evidence of use and lack of evidence of promotion and advertising of the Opponent's goods in association with its trademark.

[59] Accordingly, the grounds of opposition under section 30 are summarily dismissed.

DISPOSITION

[60] In view of all the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

Jennifer Galeano
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

**TRADEMARKS OPPOSITION BOARD
CANADIAN INTELLECTUAL PROPERTY OFFICE
APPEARANCES AND AGENTS OF RECORD**

HEARING DATE 2020-11-10

APPEARANCES

Sanjukta Tole

FOR THE OPPONENT

No one appearing

FOR THE APPLICANT

AGENT(S) OF RECORD

Marks & Clerk

FOR THE OPPONENT

Smart & Biggar LLP

FOR THE APPLICANT

SCHEDULE A

The full statement of goods (the Goods) in the Applicant's application No. 1,649,383 is set out below:

(1) Contraceptive preparations and substances, namely, contraceptive foams, injectable pharmaceutical contraceptives, oral contraceptives; spermicidal gels, liquids and creams; hygienic lubricants and disinfectants for use in the area of the vagina, penis and anus; personal lubricants; lubricants, gels, liquids and creams for sexual health and/or enhancing sexual performance; dietary, nutritional, vitamin and herbal supplements for sexual health and/or enhancing sexual performance; pharmaceutical preparations and substances for enhancing and improving sexual health and sexual performance; diagnostic preparations and substances all for gynaecological testing purposes or for the diagnosis of sexually transmitted diseases; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, namely, diagnostic and testing kits and instruments for gynecological and urological testing purposes and for the diagnosis of sexually transmitted diseases, pregnancy test kits, ovulation testing devices, instruments and apparatus, namely, in-vitro ovulation prediction kits, ovulation testing devices, instruments and apparatus, namely, medical test sticks with strips, and digital computers for reading test sticks, used in combination to test for immunoreactive species in bodily fluids that indicate fertility and ovulation; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely, electronic hand-held games, video game machines; data processing equipment, namely, computers and downloadable mobile software for database management in the field of data collection and submission for research purposes as to sexual practices, sexual health and well-being, computers; computer software, namely, computer software for remote control of massagers for intimate areas, namely massagers for sexual stimulation; computer programmes, namely, computer programs for remote control of massagers for intimate area, namely massagers for sexual stimulation; electronic game software, electronic game software for wireless units and devices, personal digital assistants, wireless telephones, mobile telephones, cellular telephones, smartphones, video phones, mobile, namely handheld computers, slate and tablet computers, namely, software for remote control of massage apparatus for intimate areas and massage apparatus and devices for sexual stimulation; application software, application software for wireless units and devices, personal digital assistants, wireless telephones, mobile telephones, cellular telephones, smartphones, video phones, mobile, slate and/or tablet computers, namely, downloadable computer software for digitally receiving and transmitting electronic signals between touch sensors and touch actuators in clothing, all via the Internet and real-time servers by means of wireless units and devices, namely, personal digital assistants, wireless telephones, mobile telephones, cellular telephones, smartphones, video phones, handheld computers, slate and tablet computers; remote control apparatus, remote control units, namely, remote controls for massagers for intimate areas, namely massagers for sexual stimulation, and remote controls for wireless units and devices, namely, personal digital assistants, wireless telephones, mobile telephones, cellular telephones, smartphones, video phones, handheld computers, slate and tablet computers; touch pads [electric], touch pads [electronic], namely, electronic touch pads for remote controls for massagers for intimate areas, namely massagers for sexual stimulation; electric actuators, electric

valve actuators, linear actuators, all for use in clothing to replicate the human touch; electrical and electronic sensors, namely, touch sensors in clothing; parts and fittings for all the aforesaid goods; condoms; contraceptive, hygienic or prophylactic devices, namely, Dutch caps, female uterine sheaths, diaphragms, inter-uterine devices, cervical caps, vaginal rings, male condoms, female condoms, contraceptive arm implants, contraceptive patches, contraceptive sponges, contraceptive oils, pessaries; massage apparatus, instruments and appliances, namely, massagers for intimate areas, massagers for sexual stimulation; electric and electronic massage apparatus, instruments and appliances, namely, battery-operated body massagers, battery-operated massagers for intimate areas, battery-operated massagers for sexual stimulation; body massagers; personal massagers; vibrators; vibrating rings; marital aids, namely sex toys; sex aids, namely, vibrators for personal use, penis rings, rings for genital stimulation, benwa balls, tongue rings, dildos, butt plugs; parts and fittings for all the aforesaid goods; clothing, namely, coats, trousers, jeans, skirts, dresses, jackets, shirts, blouses, lingerie, t-shirts, shorts, jumpers, underwear, nightwear, gloves, scarves, socks, hosiery and stockings, swimwear, belts, ties, costumes for use in sexual role playing, masquerade costumes, footwear, namely, shoes and boots, headgear, namely, hats, caps, headbands, scarves, sports helmets