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LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 241

Date of Decision: 2021-10-29

IN THE MATTER OF A SECTION 45 PROCEEDING

Riches, McKenzie & Herbert LLP Requesting Party

and

**Industria De Diseno Textil, S.A. Registered Owner
(Inditex, S.A.)**

TMA896,782 for ZARA HOME Registration

INTRODUCTION

[1] At the request of Riches, McKenzie & Herbert LLP (the Requesting Party), the Registrar of Trademarks issued a notice under section 45 of the *Trademarks Act*, RSC 1985, c T-13, (the Act) on March 1, 2018, to Industria De Diseno Textil, S.A. (Inditex, S.A.) (the Owner), the owner of registration No. TMA896,782 for the trademark ZARA HOME (the Mark).

[2] The Mark is registered for use in association with the goods and services in Schedule A.

[3] The notice required the Owner to furnish evidence showing that it had used the Mark in Canada, in association with each of the registered goods and services, at any

time within the three-year period immediately preceding the date of the notice, which in this case is between March 1, 2015, and March 1, 2018. If the Mark had not been used within the relevant period, the Owner was required to furnish evidence providing the date when the Mark was last in use and the reasons for the absence of use since that date.

[4] The relevant definitions of “use” for goods and services are set out in section 4 of the Act as follows:

4(1) A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.

4(2) A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.

[5] In response to the Registrar’s notice, the Owner furnished the affidavit of Rosemarie Isabel Santos, sworn on September 28, 2018, to which were attached Exhibits A-0 to A-236.

[6] Only the Requesting Party filed written representations and both parties attended an oral hearing.

[7] For the reasons that follow, I conclude that the registration ought to be maintained in part.

EVIDENCE

[8] Ms. Santos is the Managing Director of ZARA Home Canada Inc. (Zara Canada). Zara Canada and Zara Home España, S.A (Zara España) are wholly owned subsidiaries of Zara Holding B.V. (Zara Holding), which is a wholly owned subsidiary of the Owner.

[9] According to Ms. Santos, “the ZARA HOME Goods are sold to Zara Home Canada (as a retailer) by Zara Home España (as a distributor). The online sales Services under the ZARA HOME trade-mark are offered by Zara Home Canada.” She states that

the goods are sold and the services are performed through the Zara Home retail outlets and website.

[10] Ms. Santos also states that the Owner “has direct or indirect control of the character or quality of the Goods and Services associated with the trade-mark ZARA HOME, by either Zara Home Canada, Zara Home España or Zara Holding.”

[11] Ms. Santos states that the Owner, through Zara Canada, operates two boutiques in Canada, one in Laval and one in Toronto, and operates a website, *www.zarahome.com/ca*. Exhibits A-226 and A-227 consist of photographs of the front sign of each boutique and products sold in them. Exhibit A-229 is an extract of the web page, confirming that customers in Canada can order goods from the website. Ms. Santos states that over 24 150 orders from the website were shipped in Canada during the relevant period. Additionally, gift cards are available to purchase in stores and online. Exhibit A-232 is a representative image of such gift cards. The Mark appears on the gift card, the storefront, and the website.

[12] Regarding the notice of association between the Mark and the Owner’s goods, Ms. Santos attests that the Mark appears “on the Goods themselves or on the packages in which they are distributed or is in any other manner so associated with the Goods (for instance, by way of labels or hangtags)”. Attached to her affidavit as Exhibit A-225 is a representative sampling of labels, hangtags and zip fasteners bearing the Mark.

[13] According to Ms. Santos, the Owner provides multiple services to Zara Canada, such as keeping and managing a database with information on the Owner’s clients for marketing purposes; overseeing and supervising business operations, including accounting, finance and marketing; providing specific guidelines for shop-window display; preparing and placing advertisements in magazines; and distributing discount cards to customers.

[14] Ms. Santos states that a Zara Home newsletter was sent to Canadians during the relevant period and Exhibit A-230 is a representative sample of the newsletters sent to Canadians during that period. The Mark appears on the newsletter.

[15] Attached to her affidavit as Exhibit A-231 is advertising and commercial brochures and leaflets and various promotional and advertising material. She states that these commercial brochures and leaflets reflect “activities that occurred in the relevant period in Canada.” The Mark appears on the advertising and commercial brochures and leaflets.

[16] Ms. Santos explains that the Owner also printed catalogues until the summer of 2015 and, since then, there is only an electronic version of these catalogues. The electronic catalogues are available on the Owner’s website and on social media and are sent to the newsletters’s subscribers. I note that the Owner does not furnish an example of the catalogues.

[17] Ms. Santos explains that, given the large number of goods covered in the registration, “it is almost impossible to find one invoice and one illustration for each of the Goods.” She adds that the enumeration in the affidavit is “only illustrative and non-exhaustive of the extent of the ZARA HOME trade-mark in Canada.”

[18] The affidavit’s enumeration consists of Exhibits A-1 to A-224, A-233 and A-234. In each of these exhibits, there is first a printout from *Zarahome.com* website, showing one or more photographs of a product, the price, the name and reference number of the product and sometimes a description of it. The following pages of the exhibit are copies of invoices. Most of these invoices are from Zara España to Zara Canada and some are from Tempe, S.A., a joint venture company in which the Owner owns 50% of the shares. Ms. Santos states that Tempe, S.A. manufactures some of the registered goods under the Owner’s “supervision” and “strict specifications”.

[19] Ms. Santos also identifies the product shown in each exhibit. However, I note that, sometimes, the correlation made by Ms. Santos is not consistent with the registration. As an example, Ms. Santos describes the product depicted in Exhibit A-1 as *body milk*. The photograph demonstrates that the Mark appears directly on the product. The reference number for this product is 6072/701. There are three invoices containing the product’s number, all within the relevant period. However, the product *body milk* is not a registered goods.

[20] I also note that, in the enumeration by Ms. Santos, some products appear more than once. As an example, Ms. Santos describes each of the products in Exhibits A-23, A-24 and A-25 as *metal knob*.

[21] The enumeration by Ms. Santos also contains the following products: detergent (Exhibit A-2), eau de toilette (Exhibit A-3), hand soap (Exhibit A-4), incense (Exhibit A-5), potpourri (Exhibits A-6 and A-20), soap (Exhibits A-7, A-8, and A-9), softener (Exhibit A-10), candle (Exhibits A-11, A-12, and A-13), air deodorizer (Exhibits A-14, A-15, and A-16), fragrant bag (Exhibit A-17), car deodorizer (Exhibit A-18), deodorizing sticks (Exhibit A-19), metal box (Exhibit A-21), metal hook (Exhibit A-22), metal vase (Exhibit A-26), coffee spoon (Exhibit A-27), fork (Exhibits A-28, A-29, A-30, A-31, A-32, and A-33), knife (Exhibits A-34, A-35, A-36, and A-37), spoon (Exhibits A-39, and A-40), compact disc (Exhibits A-41, and A-42), magnifying glass (Exhibits A-43, and A-44), sandglass (Exhibits A-45, and A-46), tape measurer (Exhibit A-47), Christmas lights (Exhibit A-48), lamp foot (Exhibit A-49), lamp shade (Exhibits A-50, and A-52), lamp (Exhibits A-51, and A-53), lantern (Exhibits A-54, A-55, and A-56), clock (Exhibits A-57, A-58, A-60, and A-61), jewelry box (Exhibit A-59), agenda (Exhibits A-62, and A-63), bookend (Exhibits A-64 and A-212), boxes of cardboard (Exhibits A-65, and A-66), map (Exhibit A-67), paperweight (Exhibits A-68 and A-220), terrestrial globe (Exhibit A-69), weekly planner (Exhibit A-70), backpack (Exhibit A-71), bag (Exhibits A-72, and A-74), purse (Exhibit A-73), suitcase (Exhibit A-75), toiletry bag (Exhibit A-76), umbrella (Exhibits A-77, and A-78), basket (Exhibits A-79 and A-96), bench (Exhibit A-80), book shelf (Exhibit A-81), box (Exhibits A-82, A-101, and A-214), clothing hook (Exhibits A-83 and A-84), clothes hangers (Exhibit A-85), cushion (Exhibit A-86), furniture (Exhibit A-87), magazine rack (Exhibit A-88), mirror (Exhibit A-89), picture frame (Exhibits A-90 and A-91), pillow (Exhibit A-92), stool (Exhibits A-93 and A-224), table (Exhibit A-94), towel holder (Exhibit A-95), birdcage (Exhibit A-97), bottle opener (Exhibit A-98), bottle (Exhibit A-99), bowl (Exhibits A-100 and A-213), butter dish (Exhibit A-102), candle extinguisher (Exhibit A-103), candle holder (Exhibit A-104), chopsticks (Exhibits A-105 and A-215), coaster (Exhibits A-106 and A-216), coffee cup (Exhibit A-107), coffee pot (Exhibit A-108), coffee set (Exhibit A-109), cup (Exhibit A-110), decanter (Exhibit A-111), dish (Exhibit A-112), drawer handle (Exhibits A-113 and

A-218), flower pot (Exhibit A-114), glass (Exhibit A-115), ice bucket (Exhibit A-116), incense holder (Exhibit A-117), jar (Exhibit A-118), glass jug (Exhibit A-119), knife rest (Exhibit A-120), mug (Exhibits A-121 and A-219), napkin rings (Exhibit A-122), condiment tray (Exhibit A-123), plate (Exhibit A-124), salad bowl (Exhibit A-125), salt shaker (Exhibit A-126), soap dispenser (Exhibit A-127), soap holder (Exhibit A-128), statuette (Exhibit A-129), sugar bowl (Exhibit A-130), tea pot (Exhibit A-131), servers (Exhibit A-132), toiletry case (Exhibit A-133), tray (Exhibits A-134 and A-135), trivets (Exhibits A-136 and A-221), vase (Exhibit A-137), down duvet filling (Exhibit A-138), pillow filling (Exhibit A-139), bed sheet (Exhibits A-140 and A-141), bedspread (Exhibit A-142), blanket (Exhibits A-143 and A-144), furniture cover (Exhibit A-145), pot holders (Exhibit A-146), curtain (Exhibit A-147), cushion cover (Exhibits A-148 and A-149), duvet cover (Exhibit A-150), placemat (Exhibit A-151), kitchen cloth (Exhibit A-152), mattress cover (Exhibit A-153), napkins (Exhibit A-154), pillow cover (Exhibits A-155 and A-156), quilt (Exhibit A-157), shower curtain (Exhibit A-158), table cloth (Exhibit A-159), table runner (Exhibit A-160), curtain holder (Exhibit A-161), towel (Exhibits A-162 and A-163), ballet flat (Exhibit A-164), bathrobe (Exhibit A-165), bikini (Exhibit A-166), cap (Exhibit A-167), cardigan (Exhibit A-168), dress (Exhibit A-169), espadrille (Exhibit A-170), shawl (Exhibit A-171), hat (Exhibit A-172), housecoat (Exhibit A-173), jacket (Exhibit A-174), jersey (Exhibit A-175), kimono (Exhibit A-176), nightgown (Exhibit A-177), poncho (Exhibit A-178), pyjama (Exhibit A-179), sandal (Exhibit A-180), scarf (Exhibit A-181), shirt (Exhibit A-182), shorts (Exhibit A-183), sleeping mask (Exhibit A-184), slippers (Exhibit A-185), socks (Exhibit A-186), shoes (Exhibit A-187), sweater (Exhibit A-188), swimsuit (Exhibit A-189), trousers (Exhibit A-190), tunic (Exhibit A-191), baht rug (Exhibit A-192), carpet (Exhibit A-193), door mat (Exhibit A-194), wallpaper (Exhibit A-195), Christmas decorations (Exhibit A-196), wooden puzzle (Exhibit A-197), die soft toy (Exhibit A-198), doll (Exhibit A-199), soft toy (Exhibit A-200), plush toy (Exhibit A-201), rattle (Exhibit A-202), theatre mask (Exhibit A-203), ashtray (Exhibit A-204, A-210, and A-211), candlestick (Exhibit A-205), slate tray (Exhibits A-206, A-207, and A-208), slat trivet (Exhibit A-209), doorstop (Exhibit A-217), knob (Exhibit A-222), paper napkins (Exhibit A-223), artificial flowers and wreaths of artificial flowers (Exhibit A-233) and seat cover for children (Exhibit A-234).

[22] Also attached to Ms. Santos's affidavit are the following relevant exhibits:

- Exhibit A-235 consists of a spreadsheet indicating some products described by Ms. Santos as "ZARA Home Goods made of stone", with their reference number and related invoices. I note there are 22 products listed, including some listed in Spanish, and that for six of these products, there is no reference to related invoices.
- Exhibit A-236 consists of invoices "relating to the transfer of some of the ZARA HOME goods in Canada". Ms. Santos does not correlate the goods referenced in these invoices to any of the registered goods.

PRELIMINARY MATTER

[23] At the hearing, the Requesting Party requested to file the transcript of the cross-examination of Ms. Santos, dated December 16, 2019. However, in a section 45 proceeding, the Registrar may only receive evidence tendered by or on behalf of the registered owner [see *Meredith & Finlayson v Canada (Registrar of Trade Marks)* (1991), 40 CPR (3d) 409 (FCA)]. Therefore, the cross-examination of Ms. Santos cannot be made of record and none of the arguments founded on the cross-examination can be considered.

ANALYSIS

[24] The Requesting Party makes the following submissions:

- The Owner does not provide evidence of use of the Mark with respect to *each* of the goods and *each* services and the goods and services for which there is no such evidence should be deleted from the registration;
- The evidence provided by the Owner does not demonstrate use of the Mark in association with any registered goods considering the lack of association between the goods and the Mark;

- The Owner did not correlate the products sold with the registered goods;
- There is no evidence of transfer of any of the registered goods in the normal course of trade, since the invoices are for internal sales;
- The evidence regarding the services demonstrates that these services, excepting the retail services, were not performed or offered to a third party, but rather a subsidiary.

Evidence of use with each of the registered goods and services

[25] Section 45 clearly indicates that use is to be shown “with respect to each of the goods or services specified in the registration”. However, the summary nature of proceedings under section 45 of the Act and consequent concerns over evidentiary overkill suggests that, in some instances, there is no requirement to furnish either direct evidence or documentary proof regarding every item in each category to prevent removal of the trademark from the register [see *Saks & Co v Canada (Registrar of Trade Marks)* (1989), 24 CPR (3d) 49 (FCTD) [*Saks*], *Ridout & Maybee LLP v Omega SA*, 2005 FCA 306 and *Gowling Lafleur Henderson LLP v Neutrogena Corporation* (2009), 74 CPR (4th) 153 (TMOB)]. This concept is appropriately applied to cases where there is a long list of goods and where the statement of goods is organized such that demonstration of use for a number of goods within a category can be sufficient to show use for the entire category. However, while there is no need for evidentiary overkill in a section 45 proceeding, a registered owner is nevertheless obligated to provide evidence to the extent that the Registrar is able to form an opinion on the “use” within the meaning of the Act [*Performance Apparel Corp v Uvex Toko Canada Ltd*, 2004 FC 448]. In these circumstances, an affidavit must contain a clear statement of use within the relevant period in association with each of the goods and must provide sufficient facts to permit the Registrar to conclude that the trademark is in use in association with each good.

[26] Relying on *Saks*, the Owner argues that showing use in association with each of the registered goods in order to maintain the registration in its entirety is unreasonable. The Owner submits that the preparation of the evidence took multiple hours and that

evidence is shown for multiple goods and it should be sufficient to maintain for all the registered goods.

[27] I cannot agree with the Owner's submission. The Owner decided to file in evidence photographs and invoices for certain goods, without providing detailed declarations explaining the representative evidence. The Owner even chose to file multiple examples of the same products. As an example, the Owner provided five exhibits regarding *fork*, even though *fork* is not a registered good. That evidence will be discussed further below. Moreover, the list of registered goods is not similar to the one in *Saks*. It is not divided by categories and there are many standalone goods.

[28] The *Saks* principle is only applicable where a registered owner has provided sufficiently detailed evidence, and explained such evidence with sufficient clarity, that the Registrar can logically conclude that a trademark was used in association with each of the goods in the registration [see *Matthew S George v Dr's Own, Inc*, 2018 TMOB 147 at paras 71-77; *Sim & McBurney v en Vogue Sculptured Nail Systems Inc*, 2020 TMOB 9 at paras 24-25].

[29] Without any corroborative evidence, Ms. Santos's bare assertions that the Owner uses the Mark in association with the "Goods belonging to Classes 3, 4, 5, 6, 8, 9, 11, 12, 14, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28 and 34" and the "Services covered, inter alia, by Classes 35, 39, 40 and 45" does not provide a sufficiently detailed factual foundation upon which I could conclude that the Owner has sold *each* of the registered goods in the normal course of trade and performed or offered to perform *each* of the registered services during the relevant period.

Association of the Mark with the goods

[30] Ms. Santos clearly states that the Mark appears directly on the goods sold or on the packages in which they are distributed or otherwise in association with the goods such as on labels or hangtags. This statement is consistent with the Exhibit A-225 photographs, showing different goods such as soap, clothing items and bags, all bearing the Mark, as well as labels and hangtags bearing the Mark; the Exhibit A-226 photograph

of sandals bearing the Mark; the Exhibit A-227 picture frame bearing the Mark; and multiple products shown in Exhibits A-1 to A-224, A-233 and A-234.

[31] The Requesting Party submits that not every product shown in Exhibits A-1 to A-224, A-233 and A-234 bears the Mark. I agree that the Mark does not appear on every product shown in these exhibits. However, given the clear statement of Ms. Santos and the Exhibit A-225 photographs of hangtags and labels, I am satisfied that there is a clear notice of association between the Mark and the goods exhibited.

Correlation with the registered goods

[32] As stated above, Ms. Santos identifies various goods in the affidavit. However, her description does not always correlate with the registered goods. As an example, Ms. Santos describes the product depicted in Exhibit A-1 as *body milk*. *Body milk* is not listed in the registration.

[33] It is not for the Registrar to speculate as to the nature of the registered goods [*Fraser Milner Casgrain LLP v Fabric Life Ltd*, 2014 TMOB 135 at para 13; *Wrangler Apparel Corp v Pacific Rim Sportswear Co* (2000), 10 CPR (4th) 568 at para 12 (TMOB)]; however, reasonable inferences can be made from the evidence provided [see *Eclipse International Fashions Canada Inc v Shapiro Cohen* (2005), 48 CPR (4th) 223 (FCA)]. In making such inferences, I am mindful of the principle that, when interpreting a statement of goods in a section 45 proceeding, one is not to be “astutely meticulous when dealing with [the] language used” [see *Aird & Berlis LLP v Levi Strauss & Co*, 2006 FC 654 at para 17].

[34] Sufficient information can be gleaned from the photographs of the products to correlate certain items with specific registered goods. As an example, the Exhibit A-1 *body milk* correlates with the registered good *Cosmetics, namely: [...] milks*.

[35] On this basis, I am prepared to accept that the following registered goods are represented in the evidence:

Perfumery, namely: [...] toilet water (Exhibit A-3); soaps, namely: toilet soaps (Exhibit A-7), perfumed soaps and antibacterial soaps for personal use (Exhibits

A-4, A-8, and A-9); goods of common metal, namely: [...] cutlery (Exhibits A-28 to A-40); meerschaum and substitutes for all these materials, or of plastics, namely: decorative boxes and pills boxes (Exhibit A-82); dress and hat hangers (Exhibit A-85); coffee and tea services (Exhibit A-109); sheets [textile] (Exhibits A-140 and A-141); bed blankets (Exhibit A-143); household linen, namely: dish cloths (Exhibit A-152) ; footwear (except orthopaedic), namely [...] casual footwear (Exhibits A-164, A-170, and A-187) ; bathing suits (Exhibits A-166 and A-189); clothing for women, men and children, namely: [...] casual clothing (Exhibits A-168, A-169, A-175, A-182, and A-183); bath mats (Exhibit A-192); mats and matting (Exhibit A-194).

[36] In addition, the following registered goods are part of Ms. Santos's list:

Bleaching preparations and other substances for laundry use, namely: [...] softener, [...] detergents; incense; fuels and illuminants, namely: [...] candles and wicks for lighting; deodorants, other than for personal use, namely: [...] potpourris, perfumed candles; goods of common metal, namely: metal boxes; hooks [metal hardware]; knobs of metal; gold and silver ware, other than cutlery, forks and spoons, namely: vases; optic magnifying glasses; egg timers (sandglasses), hand-operated hand tools and implements, namely [...] measuring tapes; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely: [...] battery powered wall lights and Christmas lights; lamps; lamp shades; lanterns; chronometric instruments, namely: [...] clocks; boxes, namely: [...] jewellery boxes; bookends; boxes of cardboard or paper; paperweights; backpacks; handbags; purses; suitcases; baskets not of metal, cushions; benches (furniture); mirrors; furniture, namely: [...] bookshelves; picture frames; pillows; tables; decanters, bird cages, butter dishes; bottle openers; candle extinguishers; bottle coasters; cups; flower pots; tableware other than knives, forks and spoons, namely: plates, glasses, dishes, trays; drinking glasses; ice buckets; napkin rings; sugar bowls; teapots; plate coasters/trivets; works of art of porcelain, terracotta or glass, namely: vases, [...] statues; bedspreads; bed and furniture covers; textile or plastic curtains; covers for cushions; mattress covers; household linen, namely: [...] paper and textile napkins; curtain holders of textile material; table runners; table cloths not of paper; textiles and textile goods, namely: [...] textile fabric and towels; bathrobes; headgear, namely: [...] caps; shawl, hats, pyjamas, socks; clothing for women, men and children, namely: [...] jackets; carpets, wallpaper; decorations for Christmas trees; theatrical masks; ashtrays, of precious metal for smokers; candle sticks/candelabras; artificial flowers; wreaths of artificial flowers.

[37] However, even though certain goods enumerated in the affidavit seem to correlate to a registered good, none of them correspond to the greater category. As an example, Ms. Santos describes the products depicted in Exhibits A-121 and A-219 as *mugs*. In the Exhibit A-235 spreadsheet, there is a product listed as *stoneware mug*. This *stoneware*

mug product's number is 5755/210, which is the same number as the *mug* depicted in Exhibit A-219. However, the registered good is *goods of common metal, namely: [...]* *mugs*. On the Exhibits A-121 and A-219 photographs, the goods depicted are mugs, but do not correspond to the registered goods, since they are not made of common metal. As such, these goods will not be maintained on the registration, as evidence does not correlate with the registration.

Evidence of transfer of the registered goods in Canada

[38] The Requesting Party submits that the invoices filed in evidence do not demonstrate use as defined in section 4(1) of the Act, due to the fact that the invoices are from a subsidiary to another subsidiary, both wholly owned by the Owner, and are therefore internal sales.

[39] I consider that these invoices are not direct evidence of transfers of goods to the ultimate customers in Canada. However, in *Riches, McKenzie & Herbert LLP v Park Pontiac Buick GMC Ltd*, 2005 CarswellNat 4408 (TMOB), the Registrar stated the following at paragraph 9:

... it would go against reason to conclude that none of the 25,000 automobiles and trucks were transferred during the three years in question as that would require one to accept that an active car and truck dealership was operating for three years with no sales.

[40] Similarly, it would go against reason to conclude that the goods listed in the invoices were not ultimately sold by Zara Canada to Canadian customers, given the numbers of units regularly purchased during the relevant period and the affiant's detailed statements to that effect. I am prepared to infer that at least some of these goods were sold to customers in Canada during the relevant period.

[41] Moreover, section 4(1) of the Act does not restrict the Owner to showing transfer of the goods to the ultimate customer. Ms. Santos clearly establishes the normal course of trade in the affidavit, stating that Zara España sells the goods to Zara Canada, and that subsequently Zara Canada sells the goods to Canadian customers through two boutiques and an online website. The Requesting Party suggests that if the Registrar were to accept

such evidence of use, owners of trademarks would create subsidiaries to which to transfer registered goods in order to maintain trademark registrations. These sales would be token sales, not sales in Canada in the normal course of trade, and therefore not sufficient to maintain a trademark. However, I do not consider the invoices provided in evidence in this case to be demonstration of token sales. Therefore, I am satisfied that the evidenced goods enumerated above in paragraphs 35 and 36 were transferred to customers in Canada during the relevant period.

Evidence regarding the services

[42] The Requesting Party submits that, even if the evidence demonstrates use of the Mark in association with the registered services, the Registrar should expunge the services other than “retail sales in stores, by mail-order selling, and through the Web”, because they were provided to Zara Canada, a subsidiary of the Owner, and not offered to the public. Moreover, for multiple services, the only evidence is bare assertions of use and that is not sufficient to maintain registered services.

[43] It has been held that services should be given a broad and liberal interpretation. As long as some members of the public, consumers or purchasers, receive a benefit from the activity, it is a service [*Renaud Cointreau & Co v Cordon Bleu International Ltd* (2000), 11 CPR (4th) 95 (FCTD), aff’d 2002 FCA 11; *Live! Holdings LLC v Oyen Wiggs Green & Mutala LLP*, 2019 FC 1042].

[44] I concur with the Requesting Party that the evidence regarding multiple services is not sufficient to maintain them. A bare assertion of use is not sufficient to maintain registered services, some evidence must be furnished. However, I do not agree with the Requesting Party regarding their first submission. Some of the registered services, such as *shop-window dressing* were performed, and, even though the client is a subsidiary of the Owner, it is still a service according to the Act.

[45] Given the Exhibit A-227 and A-226 photographs of boutiques in Canada, the Exhibit A-232 photograph of a gift card bearing the Mark, the Exhibit A-230 newsletter, the Exhibit A-231 photographs of advertising and commercial brochures, and the clear statements from Ms. Santos establishing that the Owner was performing registered

services in Canada during the relevant period, I am satisfied the Owner has demonstrated use of the Mark in association with the following services within the meaning of sections 4 and 45 of the Act:

Advertising services namely: distribution of advertising and commercial brochures and leaflets, directly or by mail; promoting the sale of goods through the issuance, distribution and sale of gift cards and fidelity cards; shop-window dressing; retail sales in stores, by mail-order selling, and through the Web of clothing, clothing accessories, footwear, leather wares, underwear, home wear, perfumery, furniture, cds, dvds, stationery, household linen, carpets, home accessories, household utensils; retail store, computerized online retail, and catalogue services in the fields of house wares, furniture, home furnishings, glassware, tableware, gifts, household linens, dinnerware, cookware, clothing, clothing accessories, beauty and personal care products, leather goods, luggage and bags.

DISPOSITION

[46] Accordingly, pursuant to the authority delegated to me under section 63(3) of the Act, and in compliance with the provisions of section 45 of the Act, the registration will be amended, and will now be registered in association with the following goods and services:

Goods

(1) Bleaching preparations and other substances for laundry use, namely: softener, detergents. Soaps, namely: toilet soaps, perfumed soaps and antibacterial soaps for personal use. Perfumery, namely: toilet water; incense; fuels and illuminants, namely: candles and wicks for lighting; deodorants, other than for personal use, namely: potpourris, perfumed candles; goods of common metal, namely: metal boxes, cutlery; hooks [metal hardware]; knobs of metal. Hand-operated hand tools and implements, namely measuring tapes. Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely: battery powered wall lights and Christmas lights; optic magnifying glasses; egg timers (sandglasses); lamps; lamp shades; lanterns; horological and chronometric instruments, namely: clocks; ashtrays, of precious metal for smokers. Gold and silver ware, other than cutlery, forks and spoons, namely: vases; bookends; boxes of cardboard or paper; paperweights; backpacks; handbags; purses; suitcases. Furniture, namely: tables, bookshelves; picture frames; goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely: decorative boxes and pills boxes; pillows; benches (furniture), baskets not of metal, cushions, mirrors; bed and furniture covers, dress

and hat hangers, bottle openers, sugar bowls, boxes, namely: jewellery boxes; candle sticks/candelabras, ice buckets, decanters, bird cages, butter dishes; works of art of porcelain, terracotta or glass, namely: vases, statues; bottle coasters, plate coasters/trivets, coffee and tea services, napkin rings, cups, teapots, flower pots; tableware other than knives, forks and spoons, namely: plates, glasses, dishes, trays; drinking glasses. Textiles and textile goods, namely: textile fabric and towels; curtain holders of textile material, table runners, bedspreads, textile or plastic curtains,-mattress covers, covers for cushions, bed blankets, table cloths not of paper household linen, namely: dish cloths; sheets [textile], paper and textile napkins, Clothing for women, men and children, namely: casual clothing, jackets, footwear (except orthopaedic), namely: casual footwear, headgear, namely: caps, hats; bathrobes, socks, shawl, pyjamas, bathing suits, artificial flowers; wreaths of artificial flowers. Carpets, mats and matting; bath mats; wallpaper. Decorations for Christmas trees; theatrical masks

Services

(1) Advertising services namely: distribution of advertising and commercial brochures and leaflets, directly or by mail; promoting the sale of goods through the issuance, distribution and sale of gift cards and fidelity cards; shop-window dressing; retail sales in stores, by mail-order selling, and through the Web of clothing, clothing accessories, footwear, leather wares, underwear, home wear, perfumery, furniture, cds, dvds, stationery, household linen, carpets, home accessories, household utensils; retail store, computerized online retail, and catalogue services in the fields of house wares, furniture, home furnishings, glassware, tableware, gifts, household linens, dinnerware, cookware, clothing, clothing accessories, beauty and personal care products, leather goods, luggage and bags.

Ann-Laure Brouillette
Hearing Officer
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Goods

(1) Bleaching preparations and other substances for laundry use, namely: bleach, soap, softener, anti-static agents, starch, detergents; cleaning, polishing, scouring and abrasive preparations in powder, crystal, or liquid form for the cleaning of textile and cloth, denim and canvas-based fabric. Soaps, namely: toilet soaps, perfumed soaps and antibacterial soaps for personal use. Perfumery, namely: perfumes, concentrated perfumes, eau de Cologne, lavender water, perfume water, scented water, toilet water, extracts of flowers for perfumery, perfumed oils, bases for flower perfumes, salts, gels, creams, crystal and foam for the bath and shower; essential oils for personal use. Cosmetics, namely: adhesives for affixing false eyelashes and false hair; almond milk for skin care; creams, gels, sprays to protect from the sun; anti-wrinkle cream; beard dye; beauty skin masks; creams, lotions and gels to bleach the skin, hair, eyebrows and eye-lashes; brilliantine; bronzing lotions; cleansing skin creams, cleansing skin milks; cosmetic skin creams; cosmetic hair dye; cosmetic lotions, milks, gels, creams, oils, balms for skin care; creams, gels, oils, milks for slimming purposes; hydrating, energising, relaxing bath salts, crystals, foam and gels; cotton swabs for cosmetic purposes; day time skin creams; ephemeral decorative tattoos; depilatory creams, sheets, strips, wax; eyeliner, blush; lip, eye, eyebrow and eyelashes pencils; eye shadow; facial skin masks; firming eye cream; greases for skin and hair care; hand cream; hydrogen peroxide for hair care; lipsticks, lip gloss; liquid foundation; make-up powder; make-up removing milk, gels and lotions; mascara; moisturising skin cream; moustache wax; nail polish, enamels; oils for skin and hair care; paper guides for eye make-up; petroleum jelly for skin and hair care; protective creams for the lips; eyebrow, eyelashes and eye pencil sharpeners; shaving creams, foams, gels and balms; hair sprays; sun-tanning creams, gels, oils and lotions; tinted skin creams; tissues impregnated with cosmetic lotions for cleaning, peeling and hydrating the skin; nail-varnish remover; hair lotions; dentifrices, oils for toilet purposes, blueing for laundry, cotton(-tipped) sticks for cosmetic purposes, shoe cream, shoe polish, shoemaker's wax and pitch, hair shampoos, hair dyes; hair, eyebrow and eyelashes decolorants, deodorants for personal use (perfumery); extracts of flowers (perfumes); paper guides for painting eyes, incense, scented wood, hair spray and nail polish, pencils for cosmetic use and for eyelashes, lipsticks; after-shave lotions; lotions for cosmetic purposes; beauty masks; decorative transfers for cosmetic purposes; kits of cosmetics for hair and skin care, composed of shampoo, conditioner, skin cream, lotion and mask sold as a whole; kits of cosmetics for make-up composed of mascara, lip gloss, lipstick, blush-powder sold as a whole; false eyelashes, false fingernails, pumice stone, potpourris; fragrances; pomades for cosmetic use, cosmetic preparations for slimming purposes; cosmetic preparations for baths, cosmetic preparations for skin care, sun-tanning preparations [cosmetics]; hair waving preparations, namely: gels, balms, creams, shampoos, masks, foam, sprays and lotions; laundry preparations, namely: antibacterial soaps; depilatory preparations; sanitary preparations for toiletry; namely: mouthwash, dental floss, toothbrush, toothpaste; non-medical preparations for facial treatment, for hair treatment and hair care, namely: lotions, gels, masks, balms, shampoos, conditioners, creams for the beauty and the health of the skin and hair; make-up removing preparations, shaving preparations, fingernail care preparations. Preparations for perfuming linen, namely: satchels and scented water for linen, scented water for ironing;

varnish removing preparations, colour brightening chemicals for household purposes (laundry); stain removers. Tissues impregnated with cosmetic skin lotions, namely: paper handkerchief and wipes. Glass cloth. Industrial oils and greases; lubricants, namely: automobile lubricants, industrial lubricants; dust absorbing lubricants; wetting and binding compositions; fuels and illuminants, namely: motor spirits, diesel, methanol and ethanol; candles and wicks for lighting; grease for boots; grease for leather. Pharmaceutical and veterinary preparations, namely: vaccines for both human and veterinary use, medicines under solid and liquid form for both human and veterinary use against fleas, ticks, acne, headache, excluding specifically oral contraceptives and hormone replacement therapy; dietetic substances adapted for medical use, namely: vitamins, minerals, lecithin; baby food; plasters; medical and surgical dressings; material for stopping teeth, dental wax; all purpose disinfectants; preparations for destroying vermin; fungicides, herbicides; bath salts for medical purposes; compresses; cotton for medical purposes; deodorants, other than for personal use, namely: deodorant sprays for the house, perfumed stones, scented woods, potpourris, perfumed candles; hygienic bandages; lotions for pharmaceutical purposes, namely: anti-acne lotions, insect repellent lotions; medicine portable filled cases; menstruation pads, menstruation tampons; mineral water for medical purposes; mouthwashes for medical purposes; napkins for incontinents; chemical preparations for the diagnosis of pregnancy; salts for mineral water baths; sanitary panties; sanitary pants; pharmaceutical preparations for skin care, namely: anti-inflammatory, anti-infective, decongestants, astringents, anti-allergy solutions; smelling salts; solutions for use with contact lenses; sunburn ointments; surgical cloth [tissues]; surgical tissues. Common metals and their alloys; metal building materials, namely: construction elements of metal used for the constructions of short-term buildings for expositions, conferences, shows, cultural, sport events, namely: aluminum profiles, girders; transportable buildings of metal; materials of metal for railway tracks, namely: rails; non-electric cables and wires of common metal; ironmongery; small items of metal hardware, namely: clamps, screws, crampons, nails, pins, grates, hoods, grills, drainage grills, manholes and manholes covers; pipes and tubes of metal; safes; goods of common metal, namely: metal boxes, mugs, cutlery bowls, bolts and nuts, dishes, glasses, cutlery; bells; bins of metal; buckles of common metal; chests of metal; non-electric door bells; hooks [metal hardware]; ice moulds of metal; identity plates of metal; knobs of metal; money boxes of metal; padlocks; poles of metal; pot hooks of metal; preserve tins; preserving boxes of metal; rings of common metal for keys; signboards of metal; steps [ladders] of metal; tins; tool boxes of metal sold empty; burial vaults of metal; wire cloth; wire gauze; works of art of common metal, namely: statues, sculptures; ores of metal. Hand-operated hand tools and implements, namely hammers, drills, measuring tapes, saws; cutlery; side arms, namely: swords, bayonets; razors; non-electric can openers; hand implements for hair curling, namely: curling irons, curling pins; electric and non-electric depilation appliances, namely: shavers and razors, electrolysis depilatory kits and electric hair shavers; nutcrackers not of precious metals, electric and non-electric nail clippers, manicure sets; shaving cases, namely: boxes to range shaving products and razors; razor cases, razor blades; shoemaker's hand tools, namely: shoe lasts; fingernail files, electric and non-electric hair clippers, beard clippers, shaving sets, hair removing tweezers, fingernail nippers, rasps [hand tools], scissors. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, namely: anti-glare

glasses, pince-nez chains, contact lenses, pince-nez cords, eyeglass lenses, eyeglass cases for pince-nez and contact lenses; frames for eyeglasses and pince-nez; spectacles, sunglasses, pince-nez, supplementary lenses; lens hoods, magnetic encoded cards, electronic diaries, decimal weighbridges, sliding-weight weighbridges; directional compasses, electronic calculators, kaleidoscopes, measuring spoons, pedometers, optical mirrors, binoculars, computer printers, thermometers, barometers, automatic coin-operated amusement machines, electric and galvanic batteries, electric irons, electronic pocket translators, transistors, electronic amusement apparatus adapted for use with television receivers only. Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely: electricity meters, voltmeters, electric batteries and accumulators, electric batteries chargers, electric transformers, voltage regulators, flashlights, battery powered wall lights and Christmas lights; apparatus for recording, transmission or reproduction of sound or images, namely: receivers, integrated amplifiers, tuners, control amplifiers, power amplifiers, compact disc players, headphones, televisions, video cassette recorders, video disc players, camera, video cameras, movie cameras, memory sticks; blank magnetic data carriers, namely: computer disks, memory sticks, audio cassettes, tapes and cards, magnetic identification card, magnetically encoded credit and debit cards; recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishers; accounting machines; electronic agendas; anti-glare glasses; protective suits of aviators; bar code readers; electric batteries, binoculars, bullet-proof vests; magnetic encoded cards; eyeglass cases; cassette players; chronographs; fire protective clothing, radiation protective clothing, motorcyclist protective clothing; recorded audio-video compact discs containing films, songs, news, documentaries, video games, music; read-only memory compact discs; directional compasses; recorded computer operating programs; recorded computer software, namely: computer game programs, computer operating programs, computer programs for use in data base management, accountancy, for use as a spread sheet, for word processing, for stock control; computer printers; contact lenses; container for contact lenses; mechanism for coin-operated dispensing machines; dictating machines; diving suits; patterns for dressmaking; electronic pocket translators; eyeglass chains; eyeglass cords; eyeglass frames; eyeglasses; instruments containing eyepieces, namely: telescopes, microscopes; electric flat irons; floats for bathing and swimming; galvanic batteries; apparatus for games adapted for use with television receivers only; garments for protection against fire; gloves for divers; gloves for protection against accidents; invoicing machines; magic lanterns; optical lanterns; optical lenses; life jackets; optic magnifying glasses; measuring spoons; mirrors (optics); computer mouse ; pedometers; protective helmets; egg timers (sandglasses); shoes for protection against accidents, irradiation and fire; signal lanterns; spectacle cases; spectacle frames; spectacle glasses; spectacles (optics); sunglasses, swimming jackets; telephone apparatus, namely: telephone answering machines, intercoms, telephone automatic diallers, telephones cellular phone; temperature indicators; thermometers, not for medical purposes; electronic transistors; weighbridges; weights. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely: florescent lighting tubes, electric track lighting units; solar heating panels, electric heaters for baby bottles, hot water heater, portable electric heaters; steam generators; refrigerators, freezers, fans, water dispensers; bath tubs; bidets; electric

blankets; burners; coffee machines, electric; electric and gas cookers; electric heating cushions [pads] not for medical purposes; drying apparatus, namely: electric hand dryers, dress dryers, garment dryers and hair dryers; tumble dryers; electric heaters for feeding bottles; flares; flashlights (torches); griddles; hair dryers; lamps; lamp globes; lamp shades; lanterns; electric laundry dryers; light bulbs; electric light bulbs; lighters; pocket searchlights; showers; sinks; taps [faucets]; toasters; toilet bowls; wash-hand basins. Apparatus for locomotion by land, air or water, namely: automobiles, off-road all terrain motor vehicles, trucks, motor vehicles for the transport of passengers and goods, motor lorries, vans, buses, motorboats, airplanes, helicopters, seaplanes, gliders, hang gliders; sun-blinds adapted for automobiles; bicycles; cleaning trolleys; golf carts; pushchairs, saddle covers for bicycles or motorcycles; safety belts for vehicle seats; safety seats for children for vehicles; seat covers for vehicles; shopping trolleys carts; sleighs [vehicles]; tricycles; shaped vehicle covers; baby carriages. Precious metals and their alloys and goods in precious metals or coated therewith, namely: rings, necklace, chains, earrings, bracelets, pins, hairpins; jewellery, precious stones; horological and chronometric instruments, namely: watches, chronometers, clocks; ashtrays, of precious metal for smokers; badges of precious metal; boxes of precious metal; coins; cuff links. Gold and silver ware, other than cutlery, forks and spoons, namely: vases, glasses plates, chains, key chains; hat ornaments of precious metal; key rings [trinkets or fobs]; medals; napkin rings of precious metal; needle cases of precious metal; ornamental pins; shoe ornament of precious metal; tie pins; works of art of precious metal, namely: statues, sculptures, bibelots; costume jewellery. Paper, cardboard and goods made from these materials, namely: fax paper, gift wrapping paper, wrapping paper, grocery paper, illustration paper, note paper, opaque paper, parchment paper, photosensitive paper, printing paper, recycled paper, reproduction paper, typewriter paper, writing paper; printed matter, namely: calendars, almanacs, posters, lithographs, greeting cards, note cards, blank cards; bookbinding material, namely: bookbinding adhesive, loose-leaf binders, cloth for bookbinding, cords for bookbinding; photographs; stationery, namely: wrapping paper for books, adhesive tape dispenser, envelopes, diaries, scrapbooks, address books; adhesives for stationery or household purposes; artists' materials, namely: oil paint, paint brushes, pigments, oil pastels, pastels, palettes for painters, canvas for painting; typewriters; office requisites (except furniture), namely: rulers, rubber-bands; instructional and teaching material (except apparatus), namely: printed forms and printed guides for conducting classes, seminars, workshops in the field of fashion, dressmaking, improving business habits and business skills, information material in the form of manuals, video tapes in the field of marketing, fashion, dressmaking, management and administration; plastic materials for packaging, namely: tubing, casings, bags, envelopes, pouches and sheets made of plastic for use as packaging material; printers' type; printing blocks; albums; almanacs; disposable babies' diapers of paper and cellulose; disposable babies' napkin-pants [diaper-pants] of paper and cellulose; bags [envelopes, pouches] of paper or plastics for packaging; loose-leaf binders; bookends; bookmarkers; books; boxes for pens; boxes of cardboard or paper; calendars; cheque book holders; chromolithographs [chromos]; decalcomanias; drawing sets; engravings; fabrics for bookbinding; face towels of paper; folders for papers; hand labelling appliances, namely: label printing machines; handkerchiefs of paper; hat boxes of cardboard; passport holders, hygienic paper; ink; inking sheets for document reproducing machines; inkwells; labels, not of textile; lithographs; mats for beer glasses; table napkins of paper; napkins of

paper for removing make-up; packing paper; paperweights; patterns for dressmaking; patterns for making clothes; periodicals; posters; printed publications, namely: magazines, newspapers, books, catalogues; sealing wax; stencil cases; table linen of paper, namely: napkins, table-cloths, tray-cloths; tailors' chalk; towels of paper; tracing cloth. Writing cases [sets]; writing instruments, namely: ball-point pens, pencils for writing, pens, markers; writing materials, namely: blotting paper, blotting pads. Leather and imitations of leather, and goods made of these materials, namely: animal skins, hides, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness and saddlery, bags for climbers and campers, handbag frames, umbrella frames, purses, handbags, linings of leather for boots and shoes, key cases, attaché-cases, school bags, garments bags for travel, hat boxes of leather, sling bags for carrying infants, wheeled shopping bags, boxes of leather or of leather board, wallets, briefcases, vanity cases (not fitted), collars for animals, leather lashes, leather laces, umbrella covers, covers for horse saddles, rucksacks, haversacks, music cases, bags (envelopes, pouches) of leather for packaging; backpacks; boxes of vulcanised fibre; cases of leather or of leather board; frames for parasols; garment bags for travel; handbags; key cases [leatherware]; pocket wallets; purses; purses, not of precious metal; school satchels; sling bags for carrying infants; suitcases; travelling sets [leatherware]; vanity cases [not fitted]. Furniture, namely: sofa, chairs, recliners, tables, desks, lamps, mirrors, buffets, pictures, bookshelves; picture frames; goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely: decorative boxes and pills boxes, cutlery handles not made of metal, tops, lids and stoppers not made of metal, coasters made of plastics or cork, napkin rings not made of metal, jewellery and eyeglass frames; photo-frames; mirror frames; combs; comb handles; babies' pacifiers; fans, pillows, curtain rings, chests not of metal, cupboards, benches (furniture), table trays/tops), folding screens (furniture), frames, wooden or plastic boxes/cases, chests for toys, beds, head-rests (furniture), trolleys (furniture), bottle racks; brushes, namely: clothes brushes, nail brushes; baskets not of metal, cushions, mattresses, drawer chests, bamboo curtains, cradles, divans, shelves, mirrors, display racks, filing cabinets, garment covers [storage]; bed and furniture covers, hammocks, flower-stands [furniture], jewellery cases [caskets] not of precious metals, dressmaker's dummies, tables; works of art, of wood, wax plaster or plastic, namely: sculptures, statues, bibelots, paints, boxes, vases; umbrella stands, playpens for babies, dress and hat hangers, coat hangers, sleeping bags for camping, chairs (seats), sofas, footstools for children, embroidery frames, high chairs for babies/children, deck chairs. Household or kitchen utensils and containers (not of precious metal nor coated therewith); combs and sponges, namely: bath sponges, sponges for applying body powder, scouring sponges, combs and sponges for the toilet and grooming of pets and horses; brushes (except paint brushes), namely: toilet brushes, hair brushes, shaving brushes, brushes for pets, brushes for footwear, toothbrushes, powder brushes for makeup; brush-making materials, namely : brush shafts and bristle, natural wild oar hair, plastic fibre and filaments for use in tooth brushes; articles for cleaning purposes, namely: cleaning rags, packing-cloth, cleaning cotton, cleaning pads; steelwool; unworked or semi-worked glass (except glass used in building); beverage, crockery, china and decorative glassware, porcelain and earthenware; bottle openers, oil cruets, cocktail stirrers, candle extinguishers, non-electric make-up removing appliances, namely: wipes, napkins and cloths; cotton swabs; sugar bowls, trays, portable baby baths,

cloth for washing floors and kitchen, glass bowls, tea balls, boxes for sweetmeats; bottles, namely: baby bottles, hot water bottles, ink bottles, oil bottles, perfume bottles, vacuum bottles, water bottles: shaving brushes, pottery, coffeepots; boxes, namely: metal boxes, music boxes, metal tool boxes, glass boxes, lunch boxes, metal cash boxes, mail boxes, pill boxes, decorative boxes, jewellery boxes; non-electric heaters for feeding bottles, shoe horns, candle sticks/candelabras, wine-tasters' pipettes, fly catchers, epergnes/table center pieces, brushes for footwear; baskets, namely: flower baskets, picnic baskets, sewing baskets, wastepaper basket; water and air strainers, trouser hangers (stretchers), ice buckets, tie presses, door handles of porcelain, comb cases, ironing board covers, gardening gloves, gloves for household purposes, polishing gloves, shoe trees (stretchers), piggy banks not of metal, soap boxes, decanters, bird cages, butter dishes; toilet kits, namely: sets containing toilet utensils and articles namely hair brushes, combs and sponges, soaps, Cologne water, mirror, nail-file, nail-scissors sold as a whole; works of art of porcelain, terracotta or glass, namely: vases, decorative plates, statues, sculptures, boxes, bibelots, decorative frames; toothpick holders, carpet beaters, bread bins, dusting cloths (rags), pepper pots, clothes-pegs and drying racks for washing, plates, dusters, powder boxes (compacts), shaving brush stands, sponge holders, toilet paper holders, trouser presses, perfume sprayers and vaporizers, graters, crumb trays, bottle coasters, plate coasters/trivets, boot jacks, salt cellars, clothes racks for drying, coffee and tea services, napkin rings, washing boards, ironing boards, bread boards, cutting boards for the kitchen, cups, shirt stretchers, shoe stretchers, teapots, flower pots; toilet utensils, namely: combs and sponges, nail-file, nail-scissors, pumice stones; tableware other than knives, forks and spoons, namely: plates, glasses, dishes, trays; drinking glasses, cruets (vinegar). Ropes, string, nets, tents, awnings, sails, sacks; bags, namely: bags for washing hosiery, laundry bags, multi-purpose bags, cloth bags, garbage bags, plastic food storage bags, vacuum cleaner bags; padding and stuffing materials (except of rubber or plastics), namely: feathers, polyester fibres; raw fibrous textile materials, namely: silk, wool, cotton and linen; bottle envelopes of straw; eiderdown; hammocks; tarpaulins. Textiles and textile goods, namely: table covers, pocket and handkerchiefs, kerchiefs, textile fabric and towels; bed and table linen; curtain holders of textile material, banners, flags (not of paper), table runners, bedspreads, textile or plastic curtains, eiderdown coverlets [down coverlets], cloth labels, textile linings, mattress covers, loose covers for furniture, covers for cushions, mitts [washing], oilcloth for use as tablecloths, bed blankets, travelling rugs [lap robes], table cloths not of paper, mosquito nets, handkerchiefs of textile, blinds of textile, bath linen (except clothing); household linen, namely: dish cloths, dusters; sheets [textile], sleeping bags [sheeting], coasters [table linen], paper and textile napkins, billiard cloth, wall hangings of textile, traced cloth for embroidery; cloth towels, glass cloth, polishing cloth, furniture cloths, towels of textile, face towels of textile, napkins for removing make-up (cloth), net curtains. Clothing for women, men and children, namely: athletic clothing, baby clothing, belts, bullet-proof clothing, business clothing, casual clothing, children's clothing, dress clothing, fire retardant clothing, infant clothing, jackets, outdoor winter clothing, sports clothing, sun protective clothing, underwear, lingerie; footwear (except orthopaedic), namely: athletic footwear, beach footwear, bridal footwear, casual footwear, children's footwear, evening footwear, exercise footwear, fire protective footwear, footwear cushioning, golf footwear, infant footwear, medical personnel footwear, outdoor winter footwear, rain footwear, ski footwear, sports footwear; headgear, namely: headbands, beret, bonnets, caps, bathing

caps, hoods, hats, ear muffs, bandanas; bathrobes, bibs not made of paper, hair bands (clothing), boas (to be worn around the neck), scarves, socks, layettes [clothing], hoods (clothing), collar protectors, belts (clothing), wet suits for water-skiing; clothing kits, namely: lady's suit and top sold as a whole, suit and shirt sold as a whole; ties, corsets, short capes, stoles (clothing), shawl, bathing hats and bath sandals, hats, gloves (clothing); body linen lingerie, namely: bras, briefs, panties, suspender belts; singlets, mantillas, stockings, mittens, earmuffs (clothing); bowties; diapers; panty diapers, neckerchiefs, tie ups/pareos, furs (clothing); pyjamas, underclothing, soles for footwear, heels, suspenders, bathing suits, clothing for gymnastics and sports; veils (clothing), paper dresses; cyclist's and driver's clothing, namely: pants, shorts, tee-shirts, mittens, jackets and hats, driving gloves, clothing patches, driving suits, fire-resistant clothing for automotive racing purposes; protective helmets. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers; ornamental novelty badges [buttons]; badges for wear, not of precious metal; barrettes [hair-slides]; belt clasps; bodkins; bows for the hair; braids; brassards; brooches [clothing accessories]; buckles [clothing accessories]; embroidery; eyelets for clothing; shoe fasteners; feathers [clothing accessories]; haberdashery, except thread, namely: buttons, zippers, lace and embroidery, ribbons and braid; hair bands, hair ornaments; hair pins; hat ornaments not of precious metal; hooks (embroidering crochet -); hooks [haberdashery]; lace trimming; letters for marking linen; needle cases, not of precious metal; numerals for marking linen, orsedew [trimmings for clothing]; passementerie; pin cushions; reins for guiding children; ribbons [haberdashery]; sewing boxes; sewing thimbles; shoe laces; shoe ornaments not of precious metal; shoulder pads for clothing; slide fasteners [zippers]; spangles for clothing; tea cosies; tinsels [trimmings for clothing]; top-knots [pompoms]; wreaths of artificial flowers. Carpets, rugs, mats and matting, linoleum for covering existing floors; non-textile wall hangings; bath mats; carpet underlay; floor coverings, namely: floor planks, pavement, tiles; wallpaper. Games and playthings, namely: role playing games, pinball games, table tennis games, video games, paddle ball games, parlour games; gymnastic and sporting articles, namely: exercise mats, training stools, sports helmets, balls, free weights for weightlifting; decorations for Christmas trees; baseball gloves; bladders of balls for games; boxing gloves; Christmas trees of synthetic material; automatic and coin operated amusement machines; climbers' harness; cups for dice; dolls' clothes; dolls' houses; elbow guards [sports articles]; fencing gauntlets; fishing tackle; automatic games other than those adapted for use with television receivers only; gloves for games; golf gloves; kites; knee guards [sports articles]; toy masks; novelties for parties, namely: garlands, confetti, serpentines, flags, balloons, novelty hats; party favours; machines for physical exercises; puppets; tennis, ping-pong, squash, paddle and badminton rackets; rattles [playthings]; rods for fishing; tables for table tennis; theatrical masks

Services

(1) Advertising services namely: distribution of advertising and commercial brochures and leaflets, directly or by mail; database marketing services, in the form of compiling customer specific databases for marketing purposes and consulting, designing, printing, and collecting marketing information; promoting the sale of goods through the issuance, distribution and sale of gift cards and fidelity cards; advertising agency services; licensing of advertising slogans; distribution of samples; business management services;

business administration services; office functions, namely: secretarial and clerical services, business planning, business relocation and preparation of business reports, provision of business information, computerised business information storage and retrieval, computerised data processing and data base management and organisation of art exhibitions, automobile trade show exhibitions, craft trade show exhibitions, fashion trade show exhibitions, clothing trade show exhibitions, and jewellery trade show exhibition for commercial and advertising purposes; shop-window dressing; demonstration of goods for others at trade shows, in-store demonstrations and exhibitions by showing and displaying the goods and their uses and benefits; publication of publicity texts, organization of trade fairs for commercial and advertising purposes, namely: automobile trade fairs, craft trade fairs, fashion trade fairs, clothing trade fairs, and jewellery trade fairs, for commercial and advertising purposes; sales promotions for others, namely: promoting goods and services by arranging for sponsors to affiliate goods and services with film premieres, charity shows, horse riding, sailing, golf, by organising charity shows, and organising learning programs to promote the quality of education of an university or a high school, by preparing and placing advertising in an electronic magazine accessed through a global computer network, and through the distribution of discount cards; franchising business management assistance; management assistance to a business handling orders through global communication networks, credit and shopping card business management assistance, modelling services for advertising or sale promotion purposes, promoting shopping centres for others through the distribution of printed material and promotional contests; retail sales in stores, by mail-order selling, and through the Web of clothing, clothing accessories, footwear, leather wares, underwear, home wear, perfumery, furniture, cds, dvds, stationery, household linen, carpets, home accessories, household utensils; public auctioneering ; retail store, computerized online retail, and catalogue services in the fields of house wares, furniture, home furnishings, glassware, tableware, gifts, household linens, dinnerware, cookware, clothing, clothing accessories, beauty and personal care products, leather goods, luggage and bags.

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

HEARING DATE 2021-07-19

APPEARANCES

Gabriel St-Laurent	For the Registered Owner
Michael Adams	For the Requesting Party

AGENTS OF RECORD

Robic	For the Registered Owner
Riches, McKenzie & Herbert LLP	For the Requesting Party