



# Canadian Intellectual Property Office

## THE REGISTRAR OF TRADEMARKS

**Citation:** 2022 TMOB 256

**Date of Decision:** 2022-12-19

## IN THE MATTER OF AN OPPOSITION

**Opponent:** INTS It Is Not The Same, GmbH

**Applicant:** Stefanyshyn Ltd.

**Application:** 1,905,832 for Stefanyshyn Ltd. & dsign

### INTRODUCTION

[1] Stefanyshyn Ltd. (the Applicant) has applied to register the trademark Stefanyshyn Ltd & dsign (the Mark), shown below, in association with the following goods: (1) Bags made of leather; (2) Dress shoes; leather shoes; shoes; women's shoes (the Goods).

ds<sub>IGN</sub>

[2] INTS It Is Not The Same, GmbH (the Opponent) opposes registration of this trademark. The opposition is based primarily on allegations that the Mark is confusing with the Opponent's DESIGUAL & Design and MAGIC DESIGUAL & Design

trademarks, registered in association with the goods and services set out in Schedule A attached to this decision.

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

### **THE RECORD**

[4] The application was filed on June 22, 2018, and advertised for opposition purposes in the *Trademarks Journal* on January 1, 2020.

[5] On March 9, 2020, the Opponent opposed the application by filing a statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). All references are to the Act as amended June 17, 2019, unless otherwise noted.

[6] The grounds of opposition, as set out in the Opponent's statement of opposition, may be summarized as follows:

- The Mark is confusing with the Opponent's DESIGUAL & Design trademarks (registrations No. TMA506,605, and No. TMA752,748) and the Opponent's MAGIC DESIGUAL & Design trademark, registration No. TMA1,056,573 (collectively referred to as the Opponent's registered trademarks);
- The Applicant is not the person entitled to registration of the Mark in view that it was confusing with the Opponent's registered trademarks which had been previously used in Canada by the Opponent or its predecessors in title;
- The Mark is not distinctive;
- At the filing date of the application, the Applicant was not using or did not propose to use the Mark in Canada;
- At the filing date of the application, the Applicant was not entitled to use the Mark in Canada for the following reasons:
  - The Applicant was aware of the Opponent's trademarks and that the Mark would create confusion with them;

- Use of the Mark was and is unlawful in that it would constitute an infringement of the Opponent's rights in its registered trademarks, contrary to section 20 of the Act;
- Use of the Mark was and is unlawful in that such use would be, was and is likely to have the effect of depreciating the value of the goodwill attaching to the registered trademarks, contrary to section 22 of the Act;
- Use of the Mark would be, was and is unlawful in that such use would direct public attention to the Applicant's goods in such a way that would cause confusion between these goods and those of the Opponent contrary to section 7(b) of the Act.

[7] On July 10, 2020, the Applicant served and filed a counter statement denying each of the grounds of opposition.

[8] In support of its opposition, the Opponent filed the affidavit of Jordi Ruiz Sanchis.

[9] In support of its application, the Applicant filed the affidavit of Darren Stefanyshyn.

[10] Neither affiant was cross-examined.

[11] Neither party submitted written representations and a hearing was not held.

### **EVIDENTIAL BURDEN AND LEGAL ONUS**

[12] The Applicant bears the legal onus of showing that its application complies with the provisions of the Act. However, for each ground of opposition, 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 that ground of opposition exist. If this initial burden is met, then the Applicant must satisfy the Registrar, on a balance of probabilities, that the ground of opposition should not prevent registration of the trademark at issue [see *Joseph E Seagram & Sons Ltd v Seagram*

*Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB); *John Labatt Ltd v Molson Companies Ltd*, 30 CPR (3d) 293 (FCTD)].

### **SECTION 12(1)(D) GROUND OF OPPOSITION – REGISTRABILITY**

[13] The Opponent pleads that the Mark is not registrable under section 12(1)(d) of the Act as it is confusing with the Opponent's registered trademarks, DESIGUAL & Design and MAGIC DESIGUAL & Design, registered in association with the goods and services set out in the attached Schedule A.

[14] The material date for considering this ground of opposition is the date of my decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks*, 1991 CanLII 11769 (FCA)].

[15] I consider that the Opponent has the best chance of success in comparing the Mark with the Opponent's DESIGUAL & Design mark, registration No. TMA752,748, shown below.

# Dezigual

[16] If the Opponent is not successful based on this mark then it will not be successful based on its other trademarks because I consider that this trademark presents the Opponent's strongest case.

[17] I have exercised my discretion to check the Register and confirm that the Opponent's registration is in good standing [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. I therefore find that the Opponent has met its burden with respect to this ground of opposition.

[18] I now have to determine, on a balance of probabilities, if there is a reasonable likelihood of confusion between this trademark and the Mark.

### ***Meaning of Confusion between Trademarks***

[19] Trademarks are confusing when there is a reasonable likelihood of confusion within the meaning of section 6(2) of the Act.

[20] The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods associated with those trademarks are manufactured or performed by the same person, whether or not the goods are of the same general class or appear in the same class of the Nice Classification.

[21] Thus, section 6(2) does not concern mistaking one mark for the other, but confusion of goods or services from one source as being from another source. In the instant case, the question posed by section 6(2) is whether purchasers of the Applicant's Goods, sold under the Mark, would believe that those goods were produced or authorized or licensed by the Opponent who sells its goods under the DESIGUAL & Design trademark.

### ***Test for Confusion***

[22] The test for confusion is one of first impression and imperfect recollection. Factors to be considered, in making an assessment as to whether two trademarks are confusing, are "all the surrounding circumstances including" those specifically mentioned in sections 6(5)(a) to 6(5)(e) of the Act: the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time each has been in use; the nature of the goods, services or business; the nature of the trade; the degree of resemblance in appearance or sound of the trademarks or in the ideas suggested by them.

[23] The criteria in section 6(5) 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 at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49, where the Supreme Court of Canada states that section 6(5)(e), the

resemblance between the trademarks, will often have the greatest effect on the confusion analysis.

#### Inherent distinctiveness and extent known

[24] The inherent distinctiveness of a trademark refers to its uniqueness when considered with its associated goods and/or services.

[25] In my view, the Opponent's trademark is inherently strong because it has no meaning in the English or French language [*Thai Agri Foods Public Company Limited v Choy Foong Int'l Trading Co Inc*, 2012 TMOB 61]. The Mark, on the other hand, is comprised of two components, the letters "ds" in lowercase and the component "IGN" in uppercase. When sounded, the Mark is the word "design" which is suggestive when used in association with the Applicant's Goods. I therefore do not consider the Mark to be as inherently strong as the Opponent's trademark.

[26] The acquired distinctiveness of a trademark refers to the extent to which it has become known in Canada, through evidence of use or promotion, or other evidence suggesting that the trademark has become known in Canada. The evidence provided by the Opponent's legal representative, Mr. Jordi Ruiz Sanchis, may be summarized as follows:

- Through its corporate structure the Opponent has direct or indirect control of the character or quality of the goods and services associated with the Opponent's registered trademarks in Canada by its licensees or wholly owned subsidiaries;
- The Opponent offers its goods and services in more than 500 boutiques and major retailers throughout Canada, Europe or other countries;
- The Opponent "adopted" the trademark for its apparel and accessories in Canada at least as early as 1998;
- The Opponent's goods and services are found in the Opponent's stores and online marketplace and its goods are also sold across Canada through several authorized retailers including but not limited to, The Bay (all locations throughout

Canada), Boutique Don Quichotte (Quebec), D Style (Toronto), Clement (Quebec) and Something2Wear (Calgary);

- The Opponent's registered trademarks are always displayed on the goods, by way of a hang tag or label, or on their packaging or on storefronts with respect to services; samples of how the Opponent's registered trademarks have been displayed in association with the Opponent's goods worldwide including in Canada are attached as Exhibit 2;
- The Opponent's goods are advertised on its website *www.desigual.com* as well as in catalogues, and through social media;
- While sales numbers limited to Canada were not available, the worldwide annual sales by the Opponent of its goods and services sold in association with its registered trademarks for the ten years prior to his affidavit have never been less than EUR 500,000,000;
- For the ten years prior to the date of his affidavit, the worldwide average marketing expenses for the promotion and advertising of the Opponent's goods and services have never been less than EUR 19,000,000;
- Articles referring to the Opponent's goods and services have been published in various publications, both printed and online, distributed and available in Canada; and
- The Opponent has won numerous national and international awards.

[27] While the Opponent's evidence does not provide a breakdown of its sales and advertising figures for its goods and services in Canada, in the context of Mr. Sanchis' evidence as a whole (including significant worldly sales and marketing expenses including Canada, as well as sales through Canadian retailers), and in the absence any cross-examination, I am satisfied that the Opponent's DESIGUAL Design mark has become known to a considerable extent in Canada.

[28] The Applicant also filed evidence of use and making known of its Mark. The evidence of its President, Mr. Stefanyshyn, may be summarized as follows:

- The Applicant was established in Calgary in 2016, and incorporated in 2018; it sells limited collections of handmade fashion footwear;
- The Applicant is known for vintage designs and comfort of its fashion footwear and has established a customer base with sales of over \$175,000;
- The Applicant was recognized for its designs as a Finalist in the Fashion Category of Western Living's Designers of the Year 2017 competition;
- The Applicant has received mainstream media attention for its designs and has been featured in both CBC news and CTV news;
- The Mark has been displayed on the Applicant's Goods for over 5 years and continues to be displayed;
- The Applicant's Goods are mainly advertised and promoted in Canada through the *www.dsignstep.com* website established in June 2016; the Applicant has also been active in promoting and advertising its Goods through social media in Canada and abroad.

[29] From the evidence above, I am able to conclude that the Applicant's Mark has become known to some extent in Canada, and particularly in Western Canada.

[30] In these circumstances, in view that the inherent distinctiveness of the Opponent's trademark is stronger than the Applicant's Mark, and given that the Opponent's trademark has become known to a greater extent in Canada than the Mark, I find that this factor favours the Opponent.

#### Length of time in use

[31] While Mr. Sanchez claims that the Opponent "adopted" its trademark in Canada in 1998, the earliest evidence of use provided by the Opponent is from 2010. The



Applicant, on the other hand, has only provided evidence of use of its Mark since 2016. This factor therefore favours the Opponent.

#### Nature of Goods and Channels of Trade

[32] When considering sections 6(5)(c) and (d) of the Act, it is the statement of goods and services as defined in the registrations relied upon by the Opponent and the statement of Goods in the application for the Mark that governs the assessment of the likelihood of confusion under section 12(1)(d) of the Act [*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)]. However, as each statement must be read with a view to determining the probable type of business intended, evidence of the parties' actual trades is useful [*Triangle Tyre Co, Ltd v Gestion André Touchette inc*, 2019 FC 220; *McDonald's Corp v Coffee Hut Stores Ltd*, 1996 CanLII 3963 (FCA); *McDonald's Corp v Silcorp Ltd* (1989), 55 CPR (2d) 207 (FCTD), aff'd (1992), 41 CPR (3d) 67 (FCA)].

[33] In the present case the Applicant's Goods are either identical to or overlap with some of the Opponent's goods.

[34] With respect to the parties' channels of trade, the Opponent's Goods are sold both online and across Canada through several authorized retailers. The Applicant's Goods are also sold online, but there is no information about what other channels of trade the Applicant uses to sell its Goods. In the absence of evidence to the contrary, I must also assume that the parties' channels of trade would overlap.

[35] This factor therefore also favours the Opponent.

#### Degree of resemblance

[36] As noted above, the degree of resemblance between the trademarks will often have the greatest effect on the confusion analysis. While the trademarks must be considered in their totality, the preferable approach when assessing the degree of resemblance between two trademarks is to consider whether there is an aspect of the mark that is particularly striking or unique [see *Masterpiece*, at para 64].

[37] In my view, while both trademarks begin with similar sounding first syllables, i.e., “d” in the Mark and “de” in the Opponent’s trademark), and also share the common letters d, s, i and g, the differences between the trademarks are more significant than their similarities. In this regard, the dominant portion of the Opponent’s trademark is the word DESIGUAL as a whole, with the backward letter S design component. The dominant portion of the Mark, on the other hand, are the letters “ds”, because these letters appear in lower case and in much larger and bolder font than the letters “IGN”. Further, the parties’ trademarks do not suggest any ideas in common.

[38] I therefore find that this factor favours the Applicant.

#### Additional Surrounding Circumstance – State of the Register Evidence

[39] Evidence concerning the state of the Register is relevant to the extent that inferences may be drawn regarding the state of the marketplace [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Del Monte Corporation v Welch Foods Inc* (1992), 44 CPR (3d) 205 (FC)]. Inferences regarding the state of the market may be drawn from such evidence only if a large number of relevant registrations are located [*Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA); *McDowell v Laverana GmbH & Co KG*, 2017 FC 327 at paras 41-46]. Relevant trademarks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the trademarks at issue, and (iii) include the component at issue in a material way [*Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197].

[40] In his affidavit, Mr. Stefanyshyn states that he conducted a search of the Canadian Intellectual Property Office’s database on April 7, 2021, for trademarks in the form “ds”, and covering goods in Nice classes 18 and/or 25. Attached as Exhibit 6 to his affidavit are 7 trademark registrations for trademarks in the form “ds” covering goods in Nice classes 18 and/or 25.

[41] I find that 7 trademark registrations is insufficient to draw any inferences about the state of the marketplace, especially in the absence of any demonstrated

marketplace use: *McDowell*, above at para 46, citing *Hawke & Company Outfitters LLC v Retail Royalty Co*, 2012 FC 1539 at para 40.

[42] Accordingly, this evidence does not assist the Applicant.

### ***Conclusion regarding confusion***

[43] Ultimately, the test to be applied is whether a casual Canadian consumer, having an imperfect recollection of the Opponent's trademark DESIGUAL in association with clothing apparel and bags, when they see the Mark in association with the Goods, would think the products come from the same source.

[44] Applying the test of confusion as a matter of first impression and imperfect recollection, and despite the acquired distinctiveness of the Opponent's trademark, the length of time the Opponent's trademark has been in use, and the similarity between the nature of the parties' goods and trade, I find the overall differences between the parties' trademarks sufficient to shift the balance of probabilities regarding confusion in favour of the Applicant. I am of the view that the ordinary consumer would not, as a matter of first impression, be likely to think that the Applicant's leather bags and shoes associated with the Mark would emanate from the same source as those associated with the Opponent's DESIGUAL trademark or vice versa. Consequently, I find that there is no reasonable likelihood of confusion between the parties' trademarks. The section 12(1)(d) ground of opposition therefore is not successful.

### **SECTION 16(1)(A) – NON-ENTITLEMENT TO REGISTRATION**

[45] The Opponent pleads that the Applicant is not the person entitled to registration because the Mark was confusing with the Opponent's DESIGUAL trademarks.

[46] In order to meet its initial burden in support of this non-entitlement ground, the Opponent must show that it had used or made known its trademark in Canada prior to June, 2016, the date of first use shown in the Applicant's evidence. Further, the Opponent must establish non-abandonment of its trademark as of January 1, 2020, the date of advertisement of the subject application for the Mark.

[47] The Opponent's evidence of its use of the DESIGUAL trademark in Canada since 2010, set out above, is sufficient for the Opponent to meet its evidential burden for this ground of opposition. However, even though the material date for this ground of opposition is earlier than the material date for the section 12(1)(d) ground, the differences in material dates do not have any significant impact on the determination of the issue of confusion between the trademarks of the parties. Thus, my finding above that the trademarks are not likely to be confused also applies to this ground of opposition. This ground is therefore unsuccessful.

### **SECTION 2 GROUND OF OPPOSITION - DISTINCTIVENESS**

[48] The Opponent pleads that the Mark is not distinctive of the Goods because it does not actually distinguish the Goods in association with which the Mark is used or proposed to be used from the goods and/or services of the Opponent, nor is it adapted to so distinguish them.

[49] In order to meet its initial evidential burden under this ground of opposition, an opponent must show that its trademark had a substantial, significant or sufficient reputation in Canada in association with relevant goods and/or services so as to negate the distinctiveness of the applied for trademark [see *Motel 6, Inc v No 6 Motel Ltd*, (1981), 56 CPR (2d) 44 (FCTD); and *Bojangles' International, LLC and Bojangles Restaurants, Inc v Bojangles Café Ltd*, 2006 FC 657, 48 CPR (4th) 427]. The material date for the section 2 ground of opposition is the date of filing the statement of opposition, namely, March 9, 2020.

[50] The Opponent's evidence of its making known of the DESIGUAL trademark in Canada since 2010, set out above, is sufficient for the Opponent to meet its evidential burden for the section 2 ground of opposition. However, even though the material date for this ground of opposition is earlier than the material date for the section 12(1)(d) ground, the differences in material dates would not have any significant impact on the determination of the issue of confusion between the trademarks of the parties. Thus, my finding above that the trademarks are not likely to be confused also applies to this ground of opposition and this ground is therefore unsuccessful.

**SECTION 38(2)(E) GROUND OF OPPOSITION – NO USE OR INTENTION TO USE**

[51] The Opponent pleads that at the filing date of the application the Applicant was not using and did not propose to use the Mark in Canada in association with the applied for Goods.

[52] No evidence has been filed nor submissions made to support this ground of opposition. As the Opponent therefore fails to meet its initial burden under this ground, this ground is not successful.

**SECTION 38(2)(F) GROUND OF OPPOSITION – NON-ENTITLEMENT TO USE**

[53] The Opponent pleads that at the date of filing of the application in Canada, the Applicant was not entitled to use the applied for Mark in Canada in association with the applied for Goods for a number of reasons. For ease of reference, I reproduce those reasons below:

- (i) the Applicant was aware or is deemed to have been aware of the Opponent's trademarks and filed this application with knowledge that the Mark would be confusing with the Opponent's trademarks;
- (ii) Such use would be, was an is unlawful in that such use of the Mark with the applied for Goods would constitute an infringement of the exclusive rights of the Opponent in its registered trademarks contrary to section 20 of the Act;
- (iii) Such use would be, was and is unlawful The Applicant was not entitled to use the applied for mark in Canada in association with the applied for goods since to do so would have the effect of depreciating the goodwill attached to the Opponent's registered trademarks, contrary to section 22 of the Act; and
- (iv) Such use would be, was and is unlawful in that such use would direct public attention to the Applicant's goods, services or business in such a way as to cause confusion in Canada between those goods, services or business and those of the Opponent, contrary to section 7(b) of the Act.

[54] The Opponent did not make any submissions in support of this ground of opposition. While the Opponent has filed evidence of the use and making known of its trademarks in Canada, I am not satisfied that the Opponent has met its initial burden under this ground for the following reasons:

- Under section 30(i) of the Act as it read prior to June 17, 2019 (the Old Act), it was well established that an allegation that an applicant was or should have been aware of the opponent's trademark did not by itself support a ground of opposition under that provision [see *Woot Inc v WootRestaurants Inc Les Restaurants Woot Inc*, 2012 TMOB 197]. In my view, that jurisprudence under section 30(i) of the Old Act is instructive and should apply to section 38(2)(f) of the Act [see *Eggsmith Ltd v 10X Innovation GmbH & Co KG*, 2022 TMOB 125].
- Section 20 requires a finding of confusion; however, I have found that the Mark is not confusing with any of the Opponent's registrations.
- The Opponent has failed to adduce any evidence of a depreciation of goodwill of one or more of the Opponent's registrations as required to show a violation of section 22 of the Act [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, above, at paras 46 and 63-68].
- The Opponent has failed to adduce evidence of at least one of the elements required to show a violation of section 7(b) of the Act: deception of the public due to a misrepresentation [see the three elements set forth in *Ciba-Geigy Canada Ltd v Apotex Inc*, 1992 CanLII 33 (SCC) at para 33 cited by *Pharmacommunications Holdings Inc v Avencia International Inc*, 2008 FC 828 at para 41].

[55] As the Opponent has not met its initial burden under this ground of opposition, it is also unsuccessful.

**DISPOSITION**

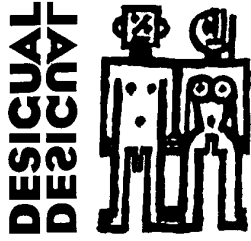
[56] In view of the above, and pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

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Cindy R. Folz  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**SCHEDULE A**

***Opponent's Registered Trademarks***

Trademark	Registration No.	Goods and Services
	TMA506,605	Clothing, namely: trousers, skirts, shorts, blouses, t-shirts, tank-tops, sweaters, waistcoats, pullovers, jackets, ties, neckerchieves, pocket handkerchieves; footwear, namely: shoes, slippers, boots; headgear, namely: hats, caps.
<b>Dezigual</b>	TMA752,748	Goods  (1) Bleaching preparations and other substances for laundry use, namely laundry bleach, laundry detergents, fabric softeners, starch for laundry purposes; cleaning, polishing, scouring and abrasive preparations, namely all purpose cleaning preparations, dishwashing detergents, carpet cleaning preparations, lavatory cleaning preparations, furniture polish, floor polish, sandpapers, cloths for polishing and cleaning, abrasive and scouring powders and liquids; soaps, namely liquid soaps for hands, face and body, hand and bath soaps, deodorant soaps and toilet soaps; perfumery, essential oils for personal use on the skin and hair, cosmetics, namely deodorants, hair care preparations, makeup, nail polish, skin care preparations; hair lotions; dentifrices. Sunglasses, spectacle cases, instruments for spectacles, namely spectacle frames and lenses; sports glasses, contact lenses, cases for contact lenses, chains and cords



		<p>for glasses (pince-nez); electronic publications (electronically-downloadable), namely books, catalogues, directories, journals, magazines, manuals, newsletters, newspapers, periodicals, reports; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments, namely intercoms, fax machines, telephones and answering machines; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely electrical switches, electrical conductors for transformers; apparatus for recording, transmission or reproduction of sound or images, namely radios, audio cassette recorders and players, compact disc players, television sets, video tape recorders and players; blank magnetic data carriers, namely floppy discs, audio and video tapes; blank recording discs, namely CDs and DVDs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, namely calculators, data processing equipment, namely computers, fax machines, modems; fire-extinguishing apparatus. Handbags. Purses. Travelling bags. Backpacks. Haversacks. Travelling sets (leatherware). Trunks and travelling backs; umbrellas; parasols and walking sticks; purses (leatherware); whips, harness and saddlery. Pocket wallets; wallets (leatherware). Money belts (clothing), leather shoes, rubber shoes, galoshes, golf shoes, shoe soles, fishing boots, basketball shoes, low</p>
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		<p>shoes, heels, mountaineering shoes, rugby shoes, lace boots, bath sandals, bath slippers, half-boots, winter boots, boxing boots, boots, vinyl shoes, beach shoes, sandals, ski boots, slippers, inner soles, soles for footwear, uppers of a shoe, heelpieces for shoes, non-slipping devices for shoes, tips for footwear, iron fittings for shoes, baseball shoes, esparto shoes or sandals, overshoes, rain shoes, track shoes, work shoes, top boots, gymnastics shoes, (for exclusive use for gymnastics), soccer shoes, laced shoes, hockey shoes, handball shoes, cyclists' clothing, wet suits for water-skiing, sporting anoraks, aerobic wear, clothing for judo, clothing for gymnastics (for exclusive use for gymnastics), clothing for Taekwondo, riding breeches, riding boots, masquerade costumes, school uniforms, raincoats, long coats, liveries, cloaks, shorts, short coats, blousons, saris, safari, suits, smocks, skirts, slacks, men's business suits, anoraks (except for sports anoraks), children's clothes, trousers, dress suits, overall, overcoats, one-piece dresses, infants' clothing, evening dresses, jackets, working clothes, jumpers, paper clothing, chasubles, blue jean pants, capes, combination suits, topcoats, tuxedos, togas, two-piece dresses, tunic, parkas, pelisses, frocks, girdles, nightgowns, short sleeve aloha shirts, negligees, dressing gowns, rompers, leotard, mantillas, bath robes, bodices, body shirts, brassieres, blouses, shower caps, shirt yokes, shirt fronts, underwear, underpants, undershirts, underpanties, bathing caps, bathing suits, bathing trunks, chemisettes, chemise, sweaters, sweat shirts, sweat pants, sports, shirts, slippers, dress</p>
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		<p>shirts, sports uniforms, unitards, collars (clothing), sleeping garments, jerseys, vests, cardigans, collar protectors, collar cuffs, camisoles, corsets, corselets, combination underwear, tanktops, teddies, track suits, pajamas, panty hose, petticoats, polo shirts, pullover, T-shirts, spats, neckties, sweat-absorbent stockings, legwarmers, leggings, muffs, mufflers, bandana, ear muffs, winter gloves, mittens, veils, boas, non-electrically heated footmuffs, shawls, shoulder wraps, wimples, maniples, scarves, stockings, heelpieces for stockings, stoles, socks, sock covers, pocket square, aprons, sports stockings, textile babies' diapers, pockets for clothing, tights, pelerines, crowns, night caps, hats, sun visors, berets, miters, hoods (clothing). Turbans, top hat, and waterproof clothing</p> <p>Services</p> <p>(1) Retail sale of clothing, footwear and headgear; retail sale of leather goods and bags namely, handbag, purses, travelling bags, backpacks, haversacks, travelling sets (leatherwear), trunks and travelling bags, walking sticks, whips, harness, saddlery, pocket wallets, belts, luggage, parasols and umbrellas.</p>
<p><b>MAGIC Dezigual</b></p>	<p>TMA1,056,573</p>	<p>Goods</p> <p>(1) Travelling handbags; Pouches namely drawstring pouches; Haversacks; Coin purses, not of precious metal; Trunks and travelling bags; Luggage, bags namely carry-all bags, wallets and other carriers; Leather shoulder belts; Trunks [luggage]; Kori wicker trunks; Traveling trunks; Trunks and travelling</p>

		<p>bags; Wallets; Casual bags; Cross-body bags; Sport bags; Garment bags for travel made of leather; Bags for campers; Roll bags; All-purpose athletic bags; Weekend bags; Gym bags; Two-wheeled shopping bags; Shoe bags; Belt bags and hip bags; Pouches for holding make-up, keys and other personal items, namely clutch bags, carry-all bags; Kit bags; Garment carriers; Book bags; Handbags; Gentlemen's handbags; Ladies' handbags; Small clutch purses; Purses, not of precious metal; Clutch bags; Evening handbags; Knitted bags, not of precious metals; Hiking bags; Wallets including card holders; Bags made of leather; School book bags; Leather credit card wallets; Clutches [purses]; Wallets of precious metal; Satchels; Keycases; Wallets for attachment to belts; Cosmetic cases sold empty; Luggage tags [leatherware]; Banknote holders; Leather cases; Cases of imitation leather; Commutation-ticket holders; Travel garment covers; Key cases made of leather; Backpacks; Back frames for carrying children; Briefcases and attache cases; Cosmetic bags; Baby carriers worn on the body; Briefbags; Coin holders; Carriers for suits, shirts and dresses; Travelling sets namely travel kits, travel handbags; Travelling sets [leatherware] namely travelling cases of leather, leather travelling bags, leather travelling suitcases; Card cases [notecases]; Shoe bags.</p> <p>(2) Pelisses; Mackintoshes; Trousers; Trousers shorts; Skirts; Waist belts; Gowns; Sweaters; Jumpers (clothing); Cardigans; Sweaters; Sweat shirts; Shirts; Undershirts; Short-sleeved T-shirts; Polo shirts; Suits; Waistcoats; Bermuda shorts; Underwear; Tee-</p>
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		<p>shirts; Leotards; Robes; Negligees; Underwear; Nighties; Pyjamas; Robes; Swimming costumes; Shawls; Sashes for wear; Neckties; Tights; Leg warmers; Scarves; Bandanas (mufflers); Stocking suspenders; Gloves of clothing; Mittens; Stockings; Socks; Footwear namely Slippers, Boots, Espadrilles, Sandals, Booties, ballerinas namely ballet flats, Sneakers, Flip-flops; Beach wraps; Pumps [footwear]; Casual footwear; Aqua shoes; Footwear [excluding orthopedic footwear] namely athletic footwear, casual footwear, evening footwear; Beach shoes; Infants' footwear; Athletics shoes; Riding shoes; Non-slipping devices for footwear namely anti-slip soles; Footwear not for sports namely casual footwear; Hats; Toques [hats]; Small hats; Millinery; Fur hats; Fashion hats; Beach hats; Woolly hats; Bobble hats; Sports headgear [other than helmets] namely head bands; Paper hats for use as clothing items; Caps [headwear]; Skull caps; Shower caps; Waterpolo caps; Ski hats; Nightcaps; Swimming caps; Sports caps and hats; Fezzes; Party hats [clothing].</p> <p>Services</p> <p>(1) Retailing in shops of clothing and fashion and clothing design accessories; Dissemination of advertising matter namely modelling for advertising or sales promotion; Advertising agencies; Business management; Business administration; Marketing services namely developing marketing strategies and marketing concept, marketing research; Commercial information services namely providing advice and information concerning commercial business management;</p>
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		<p>Retail services in relation to clothing; Retail services in relation to footwear; Retail services in relation to jewellery; Retail services in relation to sporting articles; Retail services in relation to bags; Wholesale services in relation to bags; Wholesaling of clothing; Retail services in relation to clothing; Online retail store services relating to clothing; Wholesaling of footwear; Wholesaling of jewellery; Publicity services namely distribution of samples for publicity purposes; Advertising flyer distribution; Direct mail advertising; Retail services connected with the sale of clothing and clothing accessories; Wholesaling in connection with the sale of clothing and clothing accessories; Organisation of trade fairs for commercial or advertising purposes, namely arranging and conducting fashion show exhibitions for commercial purposes; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes, namely arranging and conducting fashion events, fashion show exhibitions, and fashion shows for promotional purposes; Wholesaling of clothing; Services for creating customer loyalty namely administration of consumer loyalty programs, promoting the sale of goods and services through a consumer loyal program.</p>
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# Appearances and Agents of Record

No hearing held.

## **AGENTS OF RECORD**

**For the Opponent:** ROBIC

**For the Applicant:** No agent appointed