

**TRADE MARKS ORDINANCE (CAP. 559)**

**APPLICATION NO.** : **302220137AB**

**MARK** :



**APPLICANT** : **Jet Set AG**

**CLASS** : **35**

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**STATEMENT OF REASONS FOR DECISION**

**BACKGROUND**

1. On 12 April 2012, Jet Set AG (the “Applicant”) filed an application for registration (the “Initial Application”) of the mark shown below (the “Subject Mark”) under the Trade Marks Ordinance (Cap. 559) (the “Ordinance”).



2. The Initial Application was filed in respect of goods in classes 9, 14, 16, 25 and 28 and services in class 35 (details of which please see Annex I hereto). At the examination stage, an objection was raised against the Initial Application under section 12(3) of the Ordinance on the basis that the Subject Mark is considered similar to the following earlier registered trade marks and that the applied-for goods and services in classes 3, 18, 25 and 35 are considered similar to the goods of the cited marks. Details of the cited marks are as follows:

Cited Mark 1

Trade Mark	:	<b>JET SET</b>
Registration Number	:	1997B05632
Class	:	25
Specification	:	jeans, skirts, blazers, jackets, vests, shirts, jumpers, shorts, overalls, knitted tops and woven tops; all for children.
Owner (as at the date on which the objection was first raised)	:	MAMIYE BROTHERS INC.
Date of Registration	:	6 May 1994

Cited Mark 2  
**L'OREAL  
JET SET**  
Trade Mark :  
Registration Number : 2000B01015  
Class : 3  
Specification : perfumes, toilet water; gels, salts for the bath and the shower; toilet soaps; personal deodorants; cosmetics, creams, milks, lotions, gels and powders for the face, the body and the hands; sun care preparations; make-up preparations; essential oils for personal use; dentifrices; all included in Class 3.  
Owner : L'OREAL  
Date of Registration : 17 February 1998

Cited Mark 3  
Trade Mark :   
Registration Number : 300292545  
Class : 18  
Specification : attache cases, briefcases, suitcases, wallets, handbags, traveling bags, school bags, trunks, shoulder bags, knapsacks, men's bags, waist bags, toiletry bags, camera bags.  
Owner : HYUP SAN KI-UP JUSIKWHESA  
Date of Registration : 27 September 2004

3. On 3 April 2013, Cited Mark 1 was assigned to the Applicant. The objection under section 12(3) of the Ordinance based on Cited Mark 1 was accordingly waived.
4. On 18 July 2013, the applicant filed a request to delete classes 3 and 18 from the Initial Application. On the same day, the applicant also filed a request to divide the Initial Application with a view to overcoming the objection raised by the Registrar. Both requests were accepted and the Initial Application was divided into two divisional applications designated as 302220137AA (classes 9, 14, 16, 25 and 28) and 302220137AB (class 35).
5. On 17 February 2014, the Subject Mark was accepted for registration in respect of goods in classes 9, 14, 16, 25 and 28 under Registration No. 302220137AA.
6. The statement of reasons herein deals with Application No. 302220137AB in class 35 which covers the following services:

Class 35

Retail services in relation to perfumes, cosmetics, sunglasses, jewellery, watches, stationary, handbags, clothing and sport articles.

7. Despite submissions made on behalf of the Applicant, the objection was maintained by the Registrar. The Applicant requested a hearing on the registrability of the Subject Mark. The hearing took place before me on 20 April 2015, at which Ms. Cathy Chan, counsel, instructed by Twiggy M H Liu Law Office, appeared on behalf of the Applicant. I reserved my decision at the end of the hearing.
8. The Applicant has not filed any evidence of use of the Subject Mark to show that there has been honest concurrent use of the Subject Mark and Cited Mark 2 and Cited Mark 3 for the purpose of section 13(1) of the Ordinance. I have, therefore, only the *prima facie* case to consider.

### **DECISION**

9. Having considered all the submissions made on behalf of the Applicant and the relevant facts, I am prepared to waive the objection raised under section 12(3) of the Ordinance on the basis of Cited Mark 2. However, objection under section 12(3) of the Ordinance based on Cited Mark 3 is maintained in so far as certain services in the applied-for services is concerned.
10. I consider that the Subject Mark is acceptable for registration in respect of “retail services in relation to perfumes, cosmetics, sunglasses, jewellery, watches, stationary, clothing and sport articles” (the “Acceptable Services”) on a *prima facie* basis. Subject to meeting the requirements stipulated in paragraph 43 below, the Subject Mark may, insofar as it is in respect of the Acceptable Services, proceed to registration.
11. For the rest of this statement of reasons, therefore, I shall consider the subject application insofar as it is in respect of “retail services in relation to handbags” (the “Objectionable Services”).

### ***Section 12(3) of the Ordinance***

12. The relative grounds for refusal of an application for registration are contained in section 12 of the Ordinance. The relevant provision under section 12 reads as follows:-

“(3) A trade mark shall not be registered if –

- (a) the trade mark is similar to an earlier trade mark;

- (b) the goods or services for which the application for registration is made are identical or similar to those for which the earlier trade mark is protected; and
  - (c) the use of the trade mark in relation to those goods or services is likely to cause confusion on the part of the public.”
13. An “earlier trade mark”, as referred to in section 12(3) of the Ordinance, is defined in section 5 of the Ordinance. The relevant part under section 5 reads as follows:-

“(1) In this Ordinance, “earlier trade mark” (在先商標), in relation to another trade mark, means –

- (a) a registered trade mark which has a date of the application for registration earlier than that of the other trade mark, taking into account the priorities claimed in respect of each trade mark, if any;”
14. When determining whether the use of a trade mark is likely to cause confusion as to the trade origin of the goods and services in question on the part of the public, section 7(1) of the Ordinance expressly provides that the Registrar may take into account all factors relevant in the circumstances, including whether the use is likely to be associated with an earlier trade mark.
15. In interpreting Article 4(1)(b) of the First Council Directive 89/104 of 21 December 1988 issued by the Council of the European Communities, which is broadly similar to section 12(3) of the Ordinance, the European Court of Justice laid down the basic principles for the assessment of the likelihood of confusion between two trade marks in the cases of *Sabel v Puma* [1998] R.P.C. 199, *Lloyd Schuhfabrik Meyer* [1999] E.T.M.R. 690 and *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* [1999] E.T.M.R. 1. The basic principles were adopted in *Guccio Gucci SpA v Gucci* [2009] 5 HKLRD 28 and are listed below :
- (a) The likelihood of confusion must be appreciated globally, taking into account all relevant factors;
  - (b) The matter must be judged through the eyes of the average consumer of the goods in issue, who is deemed to be reasonably well informed and reasonably observant and circumspect;
  - (c) In order to assess the degree of similarity between the marks concerned, one must determine the degree of visual, aural and conceptual similarities between them and, where appropriate, evaluate the importance to be attached to those different

elements taking into consideration the category of goods in issue and the circumstances in which they are marketed;

- (d) The visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions given by them, bearing in mind their distinctive and dominant components. The perception of the marks in the mind of the average consumer of the goods in question plays a decisive role in the global assessment of the likelihood of confusion;
  - (e) The average consumer normally perceives a mark as a whole and does not proceed to analyze its various details;
  - (f) There is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character;
  - (g) The average consumer rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind. In addition, the average consumer's level of attention is likely to vary according to the category of goods in question;
  - (h) A lesser degree of similarity between the goods or services in question may be offset by a greater similarity between the trade marks, and vice versa;
  - (i) Mere association, in the sense that the later trade mark brings to mind the earlier trade mark, is insufficient to conclude that there is a likelihood of confusion; and
  - (j) However, the risk that the public might believe that the goods in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitute a likelihood of confusion within the meaning of the section.
16. In accordance with the above principles, I need to consider whether the Subject Mark is similar to Cited Mark 3 which will result in a likelihood of confusion to the relevant consumers if the Subject Mark is used in relation to the Objectionable Services.

***The relevant public***

17. The likelihood of confusion between the Subject Mark and Cited Mark 3 must be assessed from the perspective of the average consumer of the category of goods or services in question.

18. The Objectionable Services are “retail services in relation to handbags”. These are widely used consumer services that can be sought by everyone. The goods protected by Cited Mark 3 are “attache cases, briefcases, suitcases, wallets, handbags, traveling bags, school bags, trunks, shoulder bags, knapsacks, men's bags, waist bags, toiletry bags, camera bags” which are general consumer products that can be bought by people in their daily lives. The relevant consumers of such goods and services are therefore members of the general public. Such consumers are deemed to be reasonably well informed and reasonably observant and circumspect, but they cannot be expected to exercise exceptionally high level of attentiveness during purchase of these goods and services.
19. Ms. Chan submitted that since an average consumer is not ignorant and is expected to attain a reasonable standard, due weight must be given to the distinctive features and specific class of goods and services when assessing the likelihood of confusion between two trade marks. She argued that the applied-for services of the Subject Mark and the goods covered by the registration of Cited Mark 3 are “part-and-parcel of lifestyle and luxury products” (paragraph 29 of Ms. Chan’s skeleton argument is referred). Target consumers of such goods and services would be sufficiently sophisticated to attend to the distinctive features of the marks and would also be able to distinguish the category of goods and services which each mark is attached.
20. I am not persuaded by Ms. Chan’s submissions. When considering the ground of objection under section 12(3) of the Ordinance, one should take into account the notional and fair use of the relevant mark in relation to the goods and/or services concerned, instead of the actual use of such goods and/or services in the market (paragraph 9-030 of *Kerly’s Law of Trade Marks and Trade Names* (15th Edition)). The goods protected by Cited Mark 3 are not limited to luxury products sold in high-end stores. Likewise, the Objectionable Services are not limited to retail services of luxury products. As discussed in paragraph 18 above, I find that the relevant consumers of both the goods protected by Cited Mark 3 and the Objectionable Services are members of the general public. They are only expected to exercise an average degree of care and attention in the selection and purchase of such goods and services.

### ***Comparison of trade marks***

21. Applying the principles set out in paragraph 15 above, in comparing the marks, I have to take into consideration the Subject Mark and Cited Mark 3 in normal and fair use in relation to the relevant goods and services. I should consider the visual, aural and conceptual similarities of the marks, with reference to the perception of an average consumer of the goods and services in question, who normally views a mark by the overall impression and not by analysing its various details.

22. The Subject Mark consists of the term “jetset” presented in a script font in lower case letters with a line underneath. It does not contain any other elements or components. I have not overlooked the fact that the term “jetset” is depicted in a script font and that there is a line underneath the term “jetset”. However, in my view, the degree of stylisation is minor and the line is nothing more than a simple embellishment which does not have much impact on the overall impression of the Subject Mark. The Subject Mark is readily recognizable as a word mark consisting of the term “jetset” which is formed by conjoining two English words “jet” and “set”. Given that these two words are both ordinary dictionary words, with a small spacing between the letter “t” in the word “jet” and the letter “s” in the word “set”, it is likely that upon seeing the Subject Mark, the average consumer will simply perceive the Subject Mark as the term “jet set”.
23. Cited Mark 3 comprises the words “JET” and “SET” presented in a slanted font and in upper case letters connected with a hyphen. The lower part of the letter “J” in the word “JET” and the upper part of the letter “T” in the word “SET” are slightly elongated. Similar to the Subject Mark, the Cited Mark does not contain any other additional elements. Although Cited Mark 3 is depicted in a slanted font with two of its letters slightly elongated, and that there is a hyphen between the words “JET” and “SET”, such minor stylization and the presence of a hyphen do not in any way alter the overall effect of Cited Mark 3. The average consumer is likely to perceive Cited Mark 3 simply as the term “JET SET”.
24. At the hearing, Ms. Chan conceded that both the Subject Mark and Cited Mark 3 contain the same set of words, namely “JET SET”. However, she contended that when each mark is viewed as a whole, taking into consideration its components, style, goods or services covered by the application or registration, etc., the overall visual impression of the Subject Mark to the average consumer is highly distinguishable from that of Cited Mark 3. She submitted that each of the mark is unique and is of a distinctive style and format which must not be disregarded.
25. In my view, visually, both the Subject Mark and Cited Mark 3 share the same alphabets and those alphabets appear in exactly the same order. There are differences between the two marks, the most obvious being that the alphabets in the Subject Mark are presented in a script font and in lower case letters whereas those in Cited Mark 3 are depicted in a slightly slanted font and in upper case letters. However, I note that it is not uncommon for traders in retail services to adopt different font types and/or letter cases when they use their trade marks. In light of this, the differences in the respective font types and letter cases of the Subject Mark and Cited Mark 3 is not sufficient to distinguish the two marks.
26. I have not ignored the other differences between the two marks, namely the presence of a line underneath the term “jetset” in the Subject Mark and the presence of a hyphen in

Cited Mark 3 between the words “JET” and “SET”. Nonetheless, in my view, such differences are relatively minor and do not have much effect on the overall impressions of the marks. When I compare the Subject Mark and the Cited Mark visually as a whole, I find them to be considerably similar.

27. From an aural perspective, the Subject Mark is identical to Cited Mark 3 as they share the same combination of syllables. Although Cited Mark 3 has a hyphen, I do not find that it will lead to any phonetic variation of Cited Mark 3
28. Turning to conceptual comparison, Ms. Chan submitted at the hearing that due to the visual differences between the Subject Mark and Cited Mark 3, the two marks are conceptually different. I do not agree. As mentioned in paragraphs 22 and 23, both the Subject Mark and Cited Mark 3 would be perceived as the term “JET SET”. According to Oxford Dictionaries,<sup>1</sup> “JET SET” refers to “wealthy and fashionable people who travel widely and frequently for pleasure”. The concepts of these two marks are virtually identical.
29. Having regard to the visual, aural and conceptual similarities and the differences between the Subject Mark and the Cited Mark, I find that the overall impression given by the Subject Mark is highly similar to that given by Cited Mark 3.

### ***Comparison of goods and services***

30. In assessing the similarity of the goods and services concerned, I am guided by the following factors set out by Jacob J (as he then was) in *British Sugar v James Robertson and Sons Ltd* [1996] R.P.C. 281 (at pages 296-7):
  - (a) The respective uses of the respective goods or services;
  - (b) The respective users of the respective goods or services;
  - (c) The physical nature of the goods or acts of services;
  - (d) The respective trade channels through which the goods or services reach the market;
  - (e) In the case of self-service consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves; and
  - (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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<sup>1</sup> <http://www.oxforddictionaries.com>

31. It was also held in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*, supra (at paragraph 23) that when comparing the similarity of the goods and services in question, all the relevant factors relating to the goods and services, including but not limited to their nature, their end users, their method of use and whether they are in competition with each other or are complementary, should be taken into account.
32. When considering the question of whether retail services of goods are similar or dissimilar to the same or highly similar goods, I am also minded of the decision of the General Court of the European Communities (the “General Court”, formerly the “Court of First Instance”) in *Oakley, Inc. v OHIM* Case T-116/06. The General Court referred to *Praktiker Bau- und Heimwerkermärkte* [2005] ECR I-5873 and found the following (at paragraphs 54 to 57):
- “54. *Clearly, in the present case, the relationship between the retail services and the goods covered by the earlier trade mark is close in the sense that the goods are indispensable to or at the very least, important for the provision of those services, which are specifically provided when those goods are sold. As the Court held in paragraph 34 of Praktiker Bau- und Heimwerkermärkte, paragraph 17 above, the objective of retail trade is the sale of goods to consumers, the Court having also pointed out that that trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. Such services, which are provided with the aim of selling certain specific goods, would make no sense without the goods.*
55. *Furthermore, the relationship between the goods covered by the earlier trade mark and the services provided in connection with retail trade in respect of goods identical to those covered by the earlier trade mark is also characterised by the fact that those services play, from the point of view of the relevant consumer, an important role when he comes to buy the goods offered for sale.*
56. *It follows that, because the services provided in connection with retail trade, which concern, as in the present case, goods identical to those covered by the earlier mark, are closely connected to those goods, the relationship between those services and those goods is complementary within the meaning of paragraphs 54 and 55 above. Those services cannot therefore be regarded, as the applicant claims, as being auxiliary or ancillary to the goods in question.*
57. *Thus, notwithstanding the incorrect finding of the Board of Appeal to the effect that the services and goods in question have the same nature, purpose and method of use, it is indisputable that those services and goods display similarities, having*

*regard to the fact that they are complementary and that those services are generally offered in the same places as those where the goods are offered for sale.”*

33. The Objectionable Services are “retail services in relation to handbags” in Class 35. Handbags are identical and/or highly similar to “handbags, traveling bags, school bags, shoulder bags” protected by the registration of Cited Mark 3. In other words, the goods to which the Objectionable Services relate are identical and/or highly similar to those protected by the registration of Cited Mark 3.
34. Furthermore, the Objectionable Services could be considered to be complementary to “handbags, traveling bags, school bags, shoulder bags” protected by the registration of Cited Mark 3 as such goods are indispensable to, or at the very least important for the provision of retail services in relation to handbags (*Oakley, Inc. v OHIM*, supra., at paragraphs 46 to 58). Accordingly, I conclude that the Objectionable Services are highly similar to the goods covered by the registration of Cited Mark 3.

#### ***Likelihood of confusion***

35. Having compared the similarities of the Subject Mark and Cited Mark 3 and considered the similarities between the respective goods and services, I now move on to examine whether there is a likelihood of confusion between the marks. Under section 12(3) of the Ordinance, a likelihood of confusion refers to confusion on the part of the public as to the trade origin of the goods and services in question. It is a matter of global appreciation and all relevant factors should be taken into account. The perception of the marks in the mind of an average consumer, who seldom has the opportunity to compare trade marks side by side but relies upon his imperfect recollection of the marks, plays a decisive role in the global appreciation of the likelihood of confusion.
36. As mentioned in paragraph 18, the relevant consumers of the Objectionable Services are members of the general public. These customers are deemed to be reasonably well informed and reasonably observant and circumspect. Nonetheless, they are not particularly observant.
37. At the hearing, Ms. Chan made the following submissions:-
  - (a) The likelihood of confusion is lower when comparing services applied-for in a trade mark application against goods protected by a prior registration of an identical or similar trade mark (paragraph 21 of Ms. Chan’s skeleton argument is referred).

- (b) If the Subject Mark is of such high degree of similarity to Cited Mark 3, the likelihood of confusion between the marks cannot be reduced simply by registering the Subject Mark for goods in classes other than class 18 which is covered by the registration of Cited Mark 3. Accordingly, the only sensible conclusion which can be drawn from the fact that the Subject Mark was accepted for registration in respect of goods in classes 9, 14, 16, 25 and 28 under Registration No. 302220137AA is that to the public, the Subject Mark is not confusingly similar to Cited Mark 3 (paragraphs 21 and 22 of Ms. Chan's skeleton argument are referred).
- (c) Since the Subject Mark is now registered under Registration No. 302220137AA in respect of goods in classes 9, 14, 16, 25 and 28 and co-exists with Cited Mark 3 on the register, it would be absurd if registration of the Subject Mark for retail services in class 35 is objected when there is no identical or similar mark already registered in the same class (paragraph 23 of Ms. Chan's skeleton argument is referred).
- (d) Deletion of class 18 from the Initial Application ensures that the interests of the owner of Cited Mark 3 are sufficiently safeguarded. There will be no conflict between the Subject Mark and Cited Mark 3 even if the Subject Mark is accepted for registration in class 35. In light of the classes of goods covered by Registration No. 302220137AA, it is plain that the intended use of the Subject Mark in retail services by the Applicant would be for sales and promotion of goods bearing the Subject Mark in those classes. Since class 18 has already been deleted from the Initial Application, goods in those classes would not be produced by the Applicant and sold through the Applicant without the prior consent of the owner of Cited Mark 3. As such, confusion in the eyes of an average consumer is unlikely (paragraphs 24 and 25 of Ms. Chan's skeleton argument are referred).
- (e) The Applicant is a brand founded in 1969. It manufactures and sells Swiss luxurious leisure wear in various parts of the world. It is seeking to register the Subject Mark for its goods and retail services relating to those goods. It will be peculiar and undesirable for the Applicant if the Subject Mark can only be used to produce goods in classes 9, 14, 16, 25 and 28 but the same mark cannot be used for retail services. It will also be unfair and detrimental to the Applicant if it is forced to adopt a mark other than the Subject Mark for retail services of goods bearing the Subject Mark in Hong Kong (paragraph 26 of Ms. Chan's skeleton argument is referred).
- (f) Since Cited Mark 3 is not registered in class 35, its registered owner does not have its own retail outlets. Further, the registered owner of Cited Mark 3 is based in Korea whereas the Applicant is a Swiss corporation which intends to operate

retail services for its own products in Hong Kong. Given that an average consumer is deemed to be reasonably well informed and reasonably observant and circumspect, even if the Objectionable Services relate to goods in class 18, it is unlikely that an average consumer will fail to distinguish the distinctive features and the impression of the two marks (paragraph 31 of Ms. Chan's skeleton argument is referred).

38. As discussed in paragraphs 33 and 34, the goods covered by the registration of Cited Mark 3 are indispensable to, or at the very least important for the provision of the Objectionable Services. They are clearly complementary. One cannot rule out the possibility that handbags, traveling bags, school bags and shoulder bags bearing Cited Mark 3 will be sold at outlets in which the Objectionable Services are offered under the Subject Mark. Even if, in reality, this possibility will not materialise, there is still a potential that the relevant consumers, upon seeing handbags, traveling bags, school bags and shoulder bags bearing Cited Mark 3, would believe that such goods are from the same trade origin as the outlets that offer the Objectionable Services under the Subject Mark.
39. Noting the high degree of similarity between the Subject Mark and Cited Mark 3 and the high degree of similarity between the Objectionable Services and the goods protected by the registration of Cited Mark 3, bearing in mind the principles laid down in the cases discussed in paragraph 15 above and taking all relevant factors into account, I consider that when the Subject Mark is used in relation to the Objectionable Services, with only his imperfect recollection to rely on, the average consumer would be confused into believing that the Objectionable Services provided under the Subject Mark and the goods provided under Cited Mark 3 originated from the same trade origin or economically linked undertakings. There is a real likelihood of confusion of the origin of the Objectionable Services if the Subject Mark is allowed to co-exist with Cited Mark 3.
40. Ms. Chan referred to the Registrar's decision in the opposition to Trade Mark Application No. 301370358 for "POP BEAUTY" in classes 3 and 35 issued on 19 June 2014 (the "POP BEAUTY Case"). In that case, the application to register the mark "POP BEAUTY" for goods in classes 3 and 35 was opposed by the owner of the mark "POP PARFUM" which was registered under Registration No. 300359523 in respect of goods in class 3. My attention was drawn to paragraph 31 of the decision:

*"The average consumer of the category of goods and services concerned is deemed to be reasonably well informed and reasonably observant and circumspect. The average consumer's level of attention is likely to vary according to the category of goods or services in question."*

The ground of opposition under section 12(3) of the Ordinance was unsuccessful as it was held that the degree of similarity between the marks “POP BEAUTY” and “POP PARFUM” is so low that when the mark “POP BEAUTY” is used in relation to the goods applied-for, the average consumer would unlikely be misled into believing that those goods or services and the goods covered by Trade Mark No. 300359523 come from the same or economically-linked undertakings.

41. Unlike the mark in issue in the POP BEAUTY Case, as mentioned in paragraph 29, I find the overall impression given by the Subject Mark highly similar to that given by Cited Mark 3. The Registrar’s decision in the POP BEAUTY Case has to be distinguished. In any case, as noted by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 at 305, “it has long been held under the old Act that comparison with other marks on the register is in principle irrelevant when considering a particular mark tendered for registration, see e.g. MADAME Trade Mark and the same must be true under the 1994 Act. I disregard the state of the register evidence.” I must, therefore, emphasize that it is a matter of judgment in each case, bearing in mind factors such as the goods or services concerned and the relevant consumers of the goods or services.

## **CONCLUSION**

42. I have carefully considered all the documents filed by the Applicant together with all the oral and written submissions made in respect of the subject application. For the reasons given, I find that the Subject Mark is precluded from registration under section 11(1)(b) of the Ordinance in respect of the Objectionable Services. The subject application is accordingly refused under section 42(4)(b) of the Ordinance in respect of those services.
43. As I have found that the registration of the Subject Mark can be accepted in respect of the Acceptable Services indicated in paragraph 10 above, the application for registration in respect of such services can proceed to publication, provided that the Applicant files, on or before 14 October 2015, a Form T5A to restrict the specification by deleting the Objectionable Services. If the Applicant fails to do so on or before 14 October 2015, it will be deemed to have abandoned the application.

Janette SHAM  
for Registrar of Trade Marks  
14 September 2015

Details of the Initial Application

Trade Mark : 

Application Number : 302220137

Classes : 9, 14, 16, 25, 28, 35

Specifications : Class 9  
Glasses, sunglasses; mobile telephones.

Class 14  
Jewelry; watches and time measuring instruments.

Class 16  
Stationery.

Class 25  
Clothing, including sports clothing, jeans and leather clothing; footwear, including boots, slippers, sports footwear and shoes, headgear.

Class 28  
Gymnastics and sports articles included in this class.

Class 35  
Retail services in relation to perfumes, cosmetics, sunglasses, jewellery, watches, stationary, handbags, clothing and sport articles.

Date of Filing : 12 April 2012