

TRADE MARKS ORDINANCE (Cap. 559)

OPPOSITION TO TRADE MARK APPLICATION NO.: 302335833

MARK: The logo consists of the word "Menthus" in a bold, sans-serif font with a registered trademark symbol (®) to its upper right. Below it, the Chinese characters "萬妥" are written in a similar bold, sans-serif font, also with a registered trademark symbol (®) to its upper right.

CLASS: 3 and 5

APPLICANT: VEMEDIA SHINE LTD.

OPPONENT: THE MENTHOLATUM COMPANY

STATEMENT OF REASONS FOR DECISION

Background

1. On 3 August 2012, Vemedia Shine Ltd. (“the Applicant”) filed an application (“the subject application”) under the Trade Marks Ordinance (Cap. 559) (“the Ordinance”) for the registration of the mark “  ” (“the subject mark”).
2. Registration is sought in respect of “Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices” in class 3 and “Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides” in class 5 (“the subject goods”).
3. Particulars of the subject application were published on 11 January 2013. The Opponent “The Mentholatum Company” filed on 10 April 2013 a notice of

opposition to the subject application together with a statement of grounds of opposition (“Notice of Opposition”). A counter-statement was filed by the Applicant on 29 May 2013 in response to the Notice of Opposition filed.

4. As evidence in support of the opposition, on 11 December 2013 the Opponent filed under Rule 18 of the Trade Marks Rules (Cap.559, sub. leg.)(“the Rules”) a statutory declaration made by Stephen P. Hossenlopp, Vice President and Chief Financial Officer of the Opponent, together with exhibits (“the Opponent SD”). A supplemental statutory declaration made by Mr. Hossenlopp was subsequently filed on 31 March 2014 to confirm that the Opponent SD was executed by him on 2 December 2013. The Applicant did not file any evidence in support of its application.
5. The opposition hearing was heard on 4 August 2015. The Applicant was represented by Mr. Dominic W.H. Pun, Counsel, instructed by Tung, Ng, Tse & Heung. The Opponent’s agent indicated on 3 August 2015 that they would not attend the hearing and that the Opponent would rely upon the grounds pleaded and evidence already filed.

Grounds of opposition

6. The grounds on which the Opponent opposes registration of the subject mark as stated in the Notice of Opposition are under sections 3(1), 11(1)(a), 11(1)(b), 11(2), 11(4)(b), 11(5)(a), 11(5)(b), 12(3), 12(4) and 12(5) of the Ordinance.

The Opponent’s marks

7. According to the Notice of Opposition, the Opponent has used and/or applied for registration and/or registered a number of trade marks which consist of the word “MENTHOLATUM” and/or “曼秀雷敦” alone or in combination with other word or figurative elements in many different jurisdictions worldwide. The Opponent has set out in the Notice of Opposition examples of registered trade marks in the mainland China, Macau and Hong Kong. Amongst others, the

Opponent seeks to rely on its ownership of 19 marks (“the earlier marks”) registered in respect of goods in classes 3, 5 and/or 10 (“the Opponent’s goods”) in Hong Kong. Details of the said Hong Kong registrations are set out at Annex.

Relevant date

8. The relevant date for considering the opposition is 3 August 2012, that is the filing date of the subject application for registration.

The Opponent’s evidence of use

9. According to the Opponent SD, the Opponent is a global health and wellness company that provides non-prescription pharmaceutical, healthcare, cosmetic and personal care products to consumers in over 150 countries worldwide for over 120 years. Among the goods that are being marketed by the Opponent under the trade marks METHOLATUM and/or 曼秀雷敦 alone or in combination with other word or figurative elements (collectively referred to as “the Opponent’s trade marks”) are cosmetics and skin care products, eye-care and lip-care preparations, deodorants and pain relieving medications for human use (collectively referred to as “the Opponent’s goods”). Exhibits 1 and 2 are copies of extracts, which however post-dated the subject application, from the websites of the Opponent and its Hong Kong subsidiary showing the history of the Opponent and its range of products.
10. It is declared that the Opponent’s trade marks have been used and/or applied for registration and/or registered worldwide in respect of the Opponent’s goods. Exhibit 3 includes a list of registrations of the Opponent’s trade marks in different jurisdictions and copies of a selection of the certificates of registration. Printouts downloaded from the official records of registration of the Opponent’s trade marks in the mainland China and Macau are shown at Exhibit 4. In particular, paragraph 7 of the Opponent SD sets out the registrations of the earlier marks in Hong Kong (see Annex) and exhibit 5 contains printouts of

registration records downloaded from the online database of the Trade Marks Registry in Hong Kong.

11. According to the Opponent, the MENTHOLATUM trade mark and the Little Nurse mark (see earlier mark 8 at Annex for reference) were first introduced in the United States market in 1889 and then in Hong Kong in the 1990's. The Opponent's trade marks have been extensively used and promoted in Hong Kong since ever. Printouts of extracts, which however post-dated the subject application, from the websites of the Opponent and its Hong Kong subsidiary showing the Opponent's goods are shown at Exhibit 6. Exhibit 6 also includes copies of sample print advertisements and MTR posters in Hong Kong during 2007 to 2012, in which the Opponent's trade marks, namely "MENTHOLATUM" and/or "曼秀雷敦" and/or the Little Nurse mark, were shown on products including pain reliever, face wash, moisturizer, ointment, chest rub and nasal inhaler. Exhibit 7 includes printouts of extracts, which however post-dated the subject application, from the website of its Hong Kong subsidiary, and copies of sample advertising and promotional materials showing different products under the Opponent's trade marks. However, it appeared that those advertising and promotional materials, printed in simplified Chinese characters and with prices indicated in Renminbi, were targeted at the mainland China market instead of Hong Kong. Some of those materials were also undated or post-dated.
12. It is declared that the Opponent's goods bearing the Opponent's trade marks were available in all major pharmacies and personal stores in Hong Kong. The Opponent SD has set out sales figures and promotional expenditures of the Opponent's trade marks from 1999 to 2003 and 2007 to 2013. The sales volume and promotional expenditures were about HK\$197 million and HK\$44 million per annum respectively from 2007 to 2013. However, there is no breakdown for the various trade marks or goods of the Opponent. Exhibit 8 provides copies of sample sales and TV advertising invoices in Hong Kong. While the mark Mentholatum was printed on all the sales invoices, among the various products that were sold, only some of them indicated that they were marketed under the MENTHOLATUM mark, e.g. Mentholatum Nasal Inhaler,

Mentholatum Acnes Nose Pore Strip, Mentholatum Deep Moist, Mentholatum Mini Gel, Mentholatum Lip Balm and Mentholatum Lip Gel. It appeared that some other products were marketed under other trade marks, e.g. V-ROHTO Plus Eye Drops, Selsun Medicated, Sensodyne Total Care, Hada Labo AHA/BHA Foaming Wash, Promedial Moisture Cream, etc., and it was unclear if those products also carried the Opponent's trade marks. Further, it is unclear from the advertising invoices whether the products advertised on TV carried the Opponent's trade marks.

13. The sales volume and promotional expenditures of the Opponent's trade marks in the mainland China were about RMB 533 million and RMB 107 million per annum respectively from 1999 to 2010. However, there is no breakdown for the various trade marks or goods of the Opponent. Exhibits 9 and 10 are copies of sample advertising and promotional activity plans, sample advertising invoices from 2008 to 2011, and sample advertising and promotional materials in the mainland China. The promotional materials were however undated.
14. It is stated that the Opponent has spent substantial efforts and money in protecting the Opponent's trade marks on a worldwide basis. Exhibit 11 provides copies of some opposition decisions which were determined in favour of the Opponent in the mainland China.
15. According to the Opponent SD, as a result of the extensive use, sales, promotion, registration and enforcement activities, the Opponent has built up a substantial goodwill and reputation with the Opponent's trade marks internationally including Hong Kong and the mainland China.

Opposition under sections 5(1)(a), 7 and 12(3) of the Ordinance

16. Section 12(3) of the Ordinance provides as follows:

“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.”

17. According to section 7(1) of the Ordinance, in determining whether the use of a trade mark is likely to cause confusion on the part of the public, 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.
18. Section 12(3) of the Ordinance is similar in effect to section 5(2) of the UK Trade Marks Act 1994 which implements Article 4(1)(b) of the First Council Directive 89/104 of 21 December 1988 of the Council of the European Communities. In determining the issue under section 12(3), I take into account the guidance and principles provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2012] F.S.R. 19. Such principles have been adopted in Hong Kong and recently by the Court of Appeal in *Tsit Wing (Hong Kong) Co Ltd v TWG Tea Co Pte Ltd* [2015] 1 HKLRD414. In *Tsit Wing*, Lam VP cited (at paragraph 35) the following propositions (which were endorsed by Kitchen LJ in *Specsavers* (at paragraph 52)) as useful guidelines for assessing likelihood of confusion –

“On the basis of these and other cases the Trade Marks Registry has developed the following useful and accurate summary of key principles sufficient for the determination of many of the disputes coming before it:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who 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, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.”

19. Section 12(3) essentially prohibits the registration of a trade mark which would be likely to cause confusion on the part of the public as a result of its being similar to an earlier trade mark and because it is to be registered in respect of goods the same as or similar to those the subject of the earlier trade mark. I must therefore consider whether there are similarities between the subject mark and the Opponent's trade marks and the goods covered, and whether they would combine to create a likelihood of confusion.
20. The Opponent has set out 19 registered marks in Hong Kong in the Notice of Opposition (see Annex). All of them have a date of the application for registration earlier than that of the subject mark. According to section 5(1)(a) of the Ordinance, each of the said registered marks is an earlier trade mark in relation to the subject mark. Each of the earlier marks must be considered in turn for the purpose of determining whether it prevents acceptance of the subject application for registration under section 12(3) of the Ordinance (*Torremar Trade Mark* [2003] R.P.C. 4). Among these earlier marks, marks 1 to 4 consist merely of the word "MENTHOLATUM" registered for goods in classes 3, 5 and/or 10 (collectively referred to as "the MENTHOLATUM Mark"). Marks 5 to 11 and 13 to 18 consist of other English words and/or device in addition to the word "MENTHOLATUM" registered for goods in classes 3 and/or 5. Mark 12 comprises the Chinese characters "曼秀雷敦" ("the 曼秀雷敦 Mark") registered for goods in class 5 and mark 19 composes of the 曼秀雷敦 mark plus other Chinese characters registered for goods in class 3. It is noted that in the Notice of Opposition (see paragraphs 12 to 16) and the Opponent SD (paragraphs 20 to 21), the Opponent only compared the subject mark with the MENTHOLATUM Mark and 曼秀雷敦 Mark. As a matter of fact, amongst the 19 earlier marks, the MENTHOLATUM Mark and 曼秀雷敦 Mark have the closest resemblance to the subject mark. If the Opponent cannot succeed on the section 12(3) ground by relying on the MENTHOLATUM Mark and/or the 曼秀雷敦 Mark, its reliance on other earlier marks, which have even less resemblance to the subject mark, must also fail. In the circumstances, for the purpose of section 12(3), I will focus on the

comparison of the subject mark to the MENTHOLATUM Mark and the 曼秀雷敦 Mark respectively.

Relevant Public

21. The subject goods include cleansing and cosmetic items in class 3 and pharmaceutical and veterinary preparations, sanitary preparations, dietetic substances and other items in class 5. I consider that the relevant consumers of such goods include members of the general public and the medical and veterinary professions who will play an average to higher level of care and attention in purchasing those items.

Distinctiveness of the Opponent's trade marks

22. The MENTHOLATUM Mark has no dictionary meaning. But Mr. Pun submitted that it is highly descriptive of the Opponent's goods as it is derived from the combination of the words "menthol" and "petrolatum" which are the two ingredients of the Opponent's goods. In my view, the word "petrolatum" is not a word readily known or used in ordinary daily language, it is rare if not impossible for people to perceive METHOLATUM as deriving from the two words, not to mention any underlying message it is alleged to convey. The MENTHOLATUM Mark as a whole is not descriptive of the Opponent's goods and is inherently distinctive as a trade mark. The 曼秀雷敦 Mark also has no dictionary meaning. In respect of the Opponent's goods, it is not descriptive and is inherently distinctive.
23. Having considered the Opponent's evidence as outlined at paragraphs 9 to 15 above, I find both the MENTHOLATUM Mark and the 曼秀雷敦 Mark have been extensively used on the Opponent's goods in Hong Kong. And I am satisfied that by the relevant date the distinctiveness of the METHOLATUM Mark and the 曼秀雷敦 Mark in respect of the Opponent's goods have been enhanced through use.

Comparison of marks

24. In comparing the marks, it is not appropriate to concentrate on the similarities to

the exclusion of the differences between the marks and one cannot assume that because an element of the marks is identical the marks are similar unless the identical part constitutes the dominant element in the overall impression created by each mark, such that all the other components are insignificant (*Kerly's Law of Trade Marks and Trade Names* (15th edition), paragraph 9-093).

25. The subject mark consists of a seven-letter English word “Menthus” on the top, with the first letter in upper case and others in lower case, and two Chinese characters “萬妥” in plain typeface underneath. Each of them also has a ® symbol at its top right corner. The Opponent submitted that “Menthus” is the dominant feature of the subject mark as it is placed above “萬妥”. I do not agree. I note that both the English and Chinese components are of significant size, and I consider both may be perceived as the dominant and distinctive elements of the subject mark.
26. The MENTHOLATUM Mark of the Opponent comprises eleven letters in plain block capitals and the 曼秀雷敦 Mark consists of four Chinese characters in plain font type.
27. Visually, the subject mark has two components, namely the English and Chinese words, whereas the MENTHOLATUM Mark and the 曼秀雷敦 Mark has only one component, namely the English or Chinese word respectively. The Opponent submitted that the subject mark is similar to the MENTHOLATUM Mark as six of the seven letters, namely the first five letters “menth” and the second last letter “u”, from the word “Menthus” are incorporated in the MENTHOLATUM Mark. However, I also note that the word “Menthus” is much shorter than “MENTHOLATUM” in length and I do not consider the other letters “OLAT” and “M” are insignificant. I bear in mind that an average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The average consumer rarely has the chance to make direct comparisons between marks, when the imperfect recollection of the relevant consumers is taken into account, I consider that the Chinese component of the subject mark and the difference between the English words “Menthus” and “MENTHOLATUM” outweigh the similarity in their first five and second last

letters. Therefore, I find there is only a low degree of visual similarity between the two marks.

28. As for the 曼秀雷敦 Mark of the Opponent, it contains four Chinese characters and the subject mark contains two Chinese characters only. Moreover, the Chinese characters of the two marks do not look identical or similar visually. Accordingly, there is no visual similarity between the subject mark and the Opponent's 曼秀雷敦 Mark.
29. Phonetically, the subject mark would be pronounced as "menðʌs" in English or "萬妥" in Chinese by the English or Chinese speaking consumers respectively. For those who are bilingual, it is likely that they would refer to the mark as either "menðʌs" or "萬妥", but not both together. The MENTHOLATUM Mark of the Opponent would be pronounced as "menθpleitəm". The Opponent submitted that the first syllable in a trade mark is generally considered to be its most important feature due to the tendency that consumers would slur the termination of words or shorten the words. Even taken into consideration the possibility of slurring of words at the end, given that there are four syllables of the MENTHOLATUM Mark and its different pronunciation as compared to the subject mark, I consider that the subject mark is only similar to the MENTHOLATUM mark to a low degree phonetically.
30. The Opponent submitted that the Chinese character "萬" of the subject mark has the same pronunciation as the first Chinese character "曼" of the Opponent's 曼秀雷敦 Mark. Although the marks share the same pronunciation in their first Chinese characters, given that there are four syllables in the Opponent's 曼秀雷敦 Mark as opposed to two syllables in the subject mark, I consider the subject mark is similar to the Opponent's 曼秀雷敦 Mark to a low degree.
31. Conceptually, the English word "Menthus" of the subject mark has no dictionary meaning but the Chinese word "萬妥" may convey a message of "萬分妥當" which means "extremely satisfactory" (<http://humanum.arts.cuhk.edu.hk/Lexis/Lindict/>). As for the MENTHOLATUM Mark, it does not have any dictionary meaning. Even if it

is possible that some consumers may associate the mark with the idea of menthol and/or petrolatum, as submitted by Mr. Pun in paragraph 22 above, there is no conceptual similarity between the subject mark and the MENTHOLATUM Mark. The Opponent's 曼秀雷敦 Mark does not have any dictionary meaning and there is also no similarity between the subject mark and the Opponent's 曼秀雷敦 Mark conceptually.

32. Having regard to their visual, aural and conceptual similarities and differences, I find that the overall impression created by the subject mark is very different from that created by the MENTHOLATUM Mark or the 曼秀雷敦 Mark of the Opponent. I therefore do not consider the subject mark similar to the MENTHOLATUM Mark or the 曼秀雷敦 Mark of the Opponent when the marks are considered in their entirety.

Comparison of goods

33. Guidance on the approach to be adopted in comparing goods and services is given in *British Sugar v James Robertson and Sons Ltd* [1996] R.P.C. 281, in which Mr Justice Jacob considered, at page 296, the following factors to be relevant in determining whether or not there is similarity:
- (i) The respective uses of the respective goods or services;
 - (ii) The respective users of the respective goods or services;
 - (iii) The physical nature of the goods or acts of service;
 - (iv) The respective trade channels through which the goods or services reach the market;
 - (v) In the case of self-serve 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
 - (vi) 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.

34. Similar factors are also referred to in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, at paragraph 23:

“In assessing the similarity of the goods or services concerned,... all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.”

35. The Opponent submitted that the subject goods are the same or similar to the goods for which the Opponent’s trade marks are registered. The Opponent also submitted that the use and the end users of the subject goods are the same as those of the Opponent and their goods are in competition with each other.
36. The goods for which the Opponent’s trade marks are registered in Hong Kong are set out in Annex. Obviously, all the subject goods in class 3 are identical to the goods under the earlier mark 1, namely the MENTHOLATUM Mark, of the Opponent. The “soaps; perfumery, essential oils, cosmetics, dentifrices” in class 3 of the subject goods are also identical to the goods under the earlier mark 19, which includes the 曼秀雷敦 mark as the dominant and distinctive element, of the Opponent. And the “hair lotions” of the subject goods is similar to the “gels, sprays, mousses and balms for hair styling and hair care” of the earlier mark 19 of the Opponent. The “Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides” in class 5 of the subject goods are identical to the goods in class 5 under the earlier marks 3 and 12, namely the MENTHOLATUM Mark and the 曼秀雷敦 Mark, of the Opponent. And the “dietetic food adapted for medical or veterinary use; dietary supplements for humans and animals” in class 5 of the subject goods are similar to the class 5 goods under the earlier marks 3 and 12, namely the MENTHOLATUM Mark and the 曼秀雷敦 Mark, of the Opponent.

37. At the hearing, Mr. Pun did not make any submission in relation to comparison of goods and submitted that it is not necessary to consider the similarity of goods as the subject mark has no similarity to the Opponent's trade marks. I have no question that the subject goods under the subject mark are either identical or similar to the goods under the Opponent's MENTHOLATUM Mark and/or 曼秀雷敦 Mark.

Likelihood of confusion

38. The likelihood of confusion must be appreciated globally, taking account of all relevant factors all of which have a degree of interdependency. The matter must be judged through the eyes of the average consumer of the goods who is deemed to be reasonably well-informed and reasonably observant and circumspect. In this case, the relevant consumers for the goods in question are members of the general public and the medical and veterinary professions who would exercise an average to higher level of care and attention when purchasing these goods.

39. As analysed above, when comparing the subject mark to the MENTHOLATUM Mark of the Opponent, there is only a low degree of visual and phonetic similarities and lack of any conceptual similarity between the marks. As for the 曼秀雷敦 Mark, it only has a low degree of phonetic similarity and lack of any visual or conceptual similarity with the subject mark. When the marks are considered in their entirety, I consider that the low degree of visual and/or phonetic similarities would be outweighed by the different overall impressions given by the marks.

40. I have found above that the subject goods are identical or similar to the goods under the Opponent's earlier marks 1, 3, 12 and 19.

41. Taking into account the combined effect of all of the above considerations, I consider that despite the distinctiveness of the MENTHOLATUM Mark and 曼秀雷敦 Mark and the identity or similarity of goods, when the subject mark is used in relation to the subject goods, the average consumer would not be confused into thinking that those goods and the goods offered under the

MENTHOLATUM Mark or the 曼秀雷敦 Mark of the Opponent come from the same or economically-linked undertakings.

42. The opposition under section 12(3) therefore fails.

Opposition under section 12(5)(a) of the Ordinance

43. Section 12(5) of the Ordinance provides, *inter alia*, as follows:

“(5) ... a trade mark shall not be registered if, or to the extent that, its use in Hong Kong is liable to be prevented –

(a) by virtue of any rule of law protecting an unregistered trade mark or other sign used in the course of trade or business (in particular, by virtue of the law of passing off);

(b) ...”

44. It is alleged that the Opponent has built up a substantial goodwill and reputation in its trade marks and the adoption by the Applicant of a mark so nearly resembling the Opponent’s trade marks constitutes an act of passing off so that the subject mark should be refused under section 12(5)(a) of the Ordinance.

45. Mr. Pun submitted that as there is no similarity between the subject mark and the Opponent’s trade marks, there is no likelihood of deception among the public for the purpose of passing off.

46. The requisite elements for establishing a passing-off action were formulated in the case of *Reckitt & Colman Products v. Borden Inc.* [1990] R.P.C. 341. These elements have been repeatedly relied upon by the courts in Hong Kong including the Court of Final Appeal in *Re Ping An Securities Ltd.* (2009) 12 HKCFAR 808(FACV 26/2008). In essence, in the present context, the Opponent has to establish that:

(a) the Opponent enjoys **goodwill** attached to the goods which it supplies in the mind of the purchasing public by association with a trade mark under which its goods are offered to the public, such that the trade mark is recognized by

the public as distinctive specifically of the Opponent's goods;

(b) the Applicant has made a *misrepresentation* to the public leading or likely to lead the public to believe that the subject goods offered by it are the goods of the Opponent; and

(c) the Opponent suffers, or is likely to suffer, *damage* by reason of the erroneous belief engendered by the Applicant's misrepresentation that the source of the Applicant's subject goods is the same as the source of goods offered by the Opponent.

47. To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

48. In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

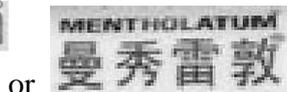
(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding

circumstances.¹

Goodwill

49. The relevant date for determining whether the Opponent has established the necessary goodwill is the date of the application for the subject mark as there is no evidence that the Applicant has used the subject mark before the date of the subject application.

50. I have already considered the Opponent's evidence as summarized in paragraphs 9 to 15 above. From the sales, advertising and promotional figures and materials which were relevant to the Hong Kong market and pre-dated the subject application, I am satisfied that the Opponent has established a goodwill and reputation in the MENTHOLATUM Mark, the 曼秀雷敦 Mark, the



or mark (“the Composite Mark”) and the Little Nurse mark (i.e. earlier mark 8 at Annex) in respect of pain reliever, ointment, chest rub, nasal inhaler and cosmetics (including face wash, moisturizer, acnes nose pore strip, lip balm and lip gel) in Hong Kong at the date of the subject application.

Misrepresentation

51. The subject goods “cosmetics” in class 3 and “pharmaceutical preparations” in class 5 are identical or similar to the goods under which the Opponent has established a goodwill in Hong Kong. Therefore, there is some overlap between the fields of activity of the Applicant and those of the Opponent. In order for the Opponent to succeed under the section 12(5)(a) ground, the Opponent still has to show that the subject mark is similar to the said marks of the Opponent in order to demonstrate a misrepresentation by the Applicant to the public leading or likely to lead the public to believe that the goods it offered are the goods of the Opponent or are connected to the Opponent.

52. I have already found that the overall impression created by the subject mark is

¹ *Halsbury's Laws of Hong Kong* (2nd Edition) Vol. 33, para. 225.021; *Oasis Stores Ltd.'s Trade Mark Application* [1998] R.P.C. 631 at 642.

very different from that created by the MENTHOLATUM Mark and 曼秀雷敦 Mark of the Opponent (see paragraph 32 above). On seeing the subject mark used in relation to the subject goods, the public would not be confused into thinking that those goods are of the same origin as the Opponent's goods or from an economically-linked undertaking even though the goods are identical or similar (see paragraph 41 above).

53. I should also consider the Composite Mark of which the Opponent has established a goodwill in Hong Kong. In fact, the Composite Mark is the most similar to the subject mark as it also has two, namely the English and Chinese, components. Visually, the English components of both the subject mark and the Composite Mark have the same first five letters of "menth" and the second last letter of "u". However, considering the differences as discussed in paragraphs 27 to 28 above in relation to the English and Chinese components respectively, I consider that the Composite Mark is only similar to the subject mark to a low degree. Phonetically, the Composite Mark would be referred to as either "'menθpleitəm" or "曼秀雷敦" by the English or Chinese speaking consumers respectively, but not both together. For the reasons given in paragraphs 29 to 30 above, I consider that the Composite Mark is only similar to the subject mark to a low degree aurally. Conceptually, as discussed in paragraph 31 above, I find there is no similarity between the said Composite Mark and the subject mark. When the two marks are considered in their entirety, I find that their overall impressions are very different.
54. As for the Little Nurse mark, visually, the words "MENTHOLATUM" only occupy a very minor position as opposed to the "Little Nurse" device. I consider there is no similarity between the subject mark and the Little Nurse mark. Phonetically, the Little Nurse mark will likely be referred to as "Little Nurse" and it is not similar to the subject mark at all. Even if the Little Nurse mark is referred to by its word element "'menθpleitəm", it will only have a low degree of similarity to the subject mark. Conceptually, there is no similarity between the subject mark and the Little Nurse mark. When the two marks are considered in their entirety, I do not consider them similar.

55. Taking into account of all the above considerations, I consider that when the subject mark is used in relation to the subject goods, the public would unlikely be misled into believing that those goods offered by the Applicant are the goods of the Opponent or are connected to the Opponent. The element of misrepresentation is therefore not made out.

Damage

56. I have found above that the subject mark and the Opponent's trade marks are not similar. It follows that there is nothing from which it could be inferred that the Opponent is likely to suffer damage by reason of any erroneous belief engendered by the Applicant's misrepresentation. As misrepresentation is not made out, there is no question of any damage resulting from a misrepresentation.

57. As the elements of misrepresentation and damage for establishing a case under section 12(5)(a) are not proved, the opposition under section 12(5)(a) must fail.

Opposition under sections 4, 5(1)(b), 12(4) and 63 of the Ordinance

58. Section 12(4) of the Ordinance provides, *inter alia*, as follows:

“... a trade mark which is–

(a) identical or similar to an earlier trade mark; and

(b) proposed to be registered for goods or services which are not identical or similar to those for which the earlier trade mark is protected,

shall not be registered if, or to the extent that, the earlier trade mark is entitled to protection under the Paris Convention as a well-known trade mark and the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

59. The meaning of “well-known trade mark” is defined in section 4 of the Ordinance and the Registrar or the court shall have regard to Schedule 2 of the Ordinance in determining whether a trade mark is well known in Hong Kong. Section 5(1)(b) of the Ordinance provides that an “earlier trade mark” includes a

trade mark which, at the date of the application for registration of the other trade mark or, where appropriate, at the date of the priority claimed in respect of that application for registration, was entitled to protection under the Paris Convention as a well-known trade mark. And it is provided in section 63(1) of the Ordinance that the owner of a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark is entitled to restrain by injunction the use in Hong Kong of a trade mark which, or the essential part of which, is identical or similar to his trade mark, in relation to identical or similar goods or services, where such use is likely to cause confusion on the part of the public.

60. In other words, to succeed under section 12(4) of the Ordinance, the Opponent has to establish that:
 - (a) the Opponent's trade mark is an earlier trade mark which is entitled to protection under the Paris Convention as a well-known trade mark;
 - (b) the subject mark is identical or similar to an earlier trade mark of the Opponent; and
 - (c) the use of the subject mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.
61. It is alleged that the Opponent's trade marks are entitled to protection as well-known trade marks under the Paris Convention and by adopting the subject mark, which closely resembles the Opponent's trade marks, the Applicant is seeking to ride on the reputation of the Opponent's trade marks, thereby gaining an unfair advantage in business. Further, as the Opponent has no control over the quality of the subject goods, the risks of confusion and/or deception and/or association with the Opponent's trade marks would be highly detrimental to the Opponent's business and to the prestige and repute enjoyed by the Opponent's trade marks. Accordingly, the subject mark should be refused registration under sections 12(4) and 63 of the Ordinance.
62. Mr. Pun submitted that, apart from the alleged close resemblance between the subject mark and the Opponent's trade marks, the Opponent has failed to adduce

evidence to prove that the use of the subject mark would in any way erode the distinctiveness of the Opponent's trade marks, or tarnish the Opponent's trade marks, or take unfair advantage of a benefit accruing to the Applicant through the use of the subject mark as required under section 12(4) of the Ordinance.

63. To satisfy the condition as stated in paragraph 60(b) above, there must be a degree of similarity between the earlier mark of the Opponent and the subject mark such that the relevant section of the public establishes a link between them, even though it does not confuse them (*Adidas-Salomon AG v Fitnessworld Trading Ltd* [2004] ETMR 10). The existence of such a link must be appreciated globally, taking into account all relevant factors, including the degree of similarity between the conflicting marks; the nature of the goods or services for which the conflicting marks were registered, the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public; the strength of the earlier mark's reputation; the degree of the earlier mark's distinctive character, whether inherent or acquired through use; and the existence of likelihood of confusion on the part of the public (*Adidas-Salomon* (supra); *Intel Corporation Inc. v CPM United Kingdom Ltd.* [2009] R.P.C. 15).
64. Amongst the various forms of the Opponent's trade marks as shown in the Opponent SD, I find that the Composite Mark, the MENTHOLATUM Mark and the 曼秀雷敦 Mark have the closest resemblance to the subject mark. And I have already found that the overall impressions created by these marks are very different from that created by the subject mark (see paragraphs 32 and 53 above), and that when the subject mark is used in relation to the subject goods, the public would unlikely be misled into believing that those goods offered by the Applicant are the goods of the Opponent or are connected to the Opponent. Despite the distinctiveness and reputation of the Opponent's trade marks and the identity or similarity between the subject goods and the Opponent's goods, I consider that the dissimilarities between those marks and the subject mark are such that it would not even bring the Opponent's trade marks to mind when the relevant public sees the subject mark on the subject goods. That means, the use of the subject mark on the subject goods would not give rise to a link with the Opponent's trade marks in the minds of the relevant public. Having considered

all the factors relevant to the circumstances of the case, I am not satisfied that the relevant consumers would establish a link between the subject mark and the Opponent's trade marks.

Unfair advantage/detriment

65. Regarding the requirement referred to in paragraph 60(c) above, the proprietor of the earlier mark must adduce proof that the use of the later mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark. The existence or likelihood of existence of such an injury must be assessed globally, taking into account all relevant factors as stated in paragraph 63 above (*Intel v CPM* (supra)). Detriment to and unfair advantage of distinctive character or repute has to be proved by real, as opposed to theoretical, evidence and cannot be merely assumed from the fact that the earlier mark has a substantial reputation (*Creditmaster Trade Mark* [2005] R.P.C. 21). Section 12(4) does not have the sweeping effect of preventing the registration of a sign which is the same as or similar to a well-known earlier trade mark. It is also not intended to enable the owner of a well-known earlier trade mark to object as a matter of course to the registration or use of a sign which may remind people of his mark (*Premier Brands UK Ltd v Typhoon Europe Ltd* [2000] F.S.R. 767).
66. As pointed out by Mr. Pun, the Opponent has not adduced any evidence to show that use of the subject mark would in any way take unfair advantage of, or be detrimental to, the distinctive character or repute of the Opponent's trade marks. The evidence filed by the Opponent only relates to the use, reputation and goodwill of the Opponent's trade marks. And the Opponent's plea in relation to unfair advantage and detriment remain bare assertions.
67. Further, as the Opponent has failed to establish that use of the subject mark in respect of the subject goods would give rise to a link with the Opponent's trade marks in the minds of the relevant public, it follows that there is nothing from which it could be inferred that in consequence of such a link, the use of the subject mark either takes unfair advantage of the distinctive character or repute of the Opponent's trade marks or is detrimental to that distinctive character or

repute. The requirement referred to in paragraph 60(c) above is not established.

68. As the requirements under paragraph 60(b) and (c) above are not met, it is not necessary for me to make a finding on the requirement as to whether the Opponent's trade marks are entitled to protection under the Paris Convention as well-known trade marks or not. The opposition under section 12(4) of the Ordinance on the basis of the Opponent's trade marks must fail.

Opposition under section 11(5)(b) of the Ordinance

69. Section 11(5)(b) of the Ordinance provides that:

“(5) A trade mark shall not be registered if, or to the extent that –

...

(b) the application for registration of the trade mark is made in bad faith.”

70. The term “bad faith” is not defined in the Ordinance. In *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] R.P.C. 367 at 379, Lindsay J. said in relation to section 3(6) of the UK Trade Marks Act 1994 (equivalent to section 11(5)(b) of the Ordinance):

“I shall not attempt to define bad faith in this context. Plainly it includes dishonesty and, as I would hold, includes also some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined. Parliament has wisely not attempted to explain in detail what is or is not bad faith in this context: how far a dealing must so fall-short in order to amount to bad faith is a matter best left to be adjudged not by some paraphrase by the courts (which leads to the danger of the courts then construing not the Act but the paraphrase) but by reference to the words of the Act and upon a regard to all material surrounding circumstances.”

71. In *Harrison v Teton Valley Trading Co (CHINAWHITE)* [2005] F.S.R. 10, the English Court of Appeal said (at paragraph 26):

“The words “bad faith” suggest a mental state. Clearly when considering the question of whether an application to register is made in bad faith all the circumstances will be relevant. However the court must decide whether the knowledge of the applicant was such that his decision to apply for registration would be regarded as in bad faith by persons adopting proper standards.”

72. Further, in *Ajit Weekly Trade Mark* [2006] R.P.C. 25, the Appointed Person stated as follows:

“The subjective element of the test means that the tribunal must ascertain what the defendant knew about the transaction or other matters in question. It must then be decided whether in the light of that knowledge, the defendant’s conduct is dishonest judged by ordinary standards of honest people, the defendant’s own standards of honesty being irrelevant to the determination of the objective element.”

73. In the present case, it is stated in the Notice of Opposition that due to the deceptive resemblance between the subject mark and the Opponent’s famous trade marks, the subject mark is presumed to have been filed in bad faith, as the Applicant ought to have known about the Opponent's famous trade marks when it adopted the subject mark. In the Counter-statement, the Opponent denied that the application for the registration of the subject mark has been made in bad faith.
74. An allegation that a trade mark has been applied for in bad faith is a serious allegation. It should not be made unless it can be fully and properly pleaded and should not be upheld unless it is distinctly proved and this will rarely be possible by a process of inference (*ROYAL ENFIELD Trade Marks* [2002] R.P.C. 24 at para. 31).
75. Accordingly, it is not possible to make a presumption of bad faith in the present case without it being distinctly proved by evidence. As I have found that the subject mark is dissimilar to the Opponent’s trade marks, I do not find there is any basis for inferring or concluding that the subject mark is copied from any of the Opponent’s trade marks.

76. Taking into account all the relevant circumstances of this case, I do not find that there is any basis for concluding that the Applicant's decision to apply for registration of the subject mark in respect of the subject services would be regarded as in bad faith by persons adopting proper standards. The ground of opposition under section 11(5)(b) of the Ordinance must fail.

Opposition under sections 11(1)(a), 11(1)(b) and 11(2) of the Ordinance

77. Section 11(1) and (2) of the Ordinance provides that:

“(1) Subject to subsection (2), the following shall not be registered-

(a) signs which do not satisfy the requirements of section 3(1) (meaning of “trade mark”);

(b) trade marks which are devoid of any distinctive character;

...

(2) A trade mark shall not be refused registration by virtue of subsection 1(b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

78. Section 3(1) defines a “trade mark” (商標) to mean any sign which is capable of distinguishing the goods or services of one undertaking from those of other undertakings and which is capable of being represented graphically.

79. The difference between the objections of sections 3(1)(a) and 3(1)(b) of the UK Trade Marks Act 1994 (“the 1994 Act”), which are similar to sections 11(1)(a) and 11(1)(b) of the Ordinance respectively, has been discussed in *MESSIAH FROM SCRATCH Trade Mark* [2000] R.P.C. 44. Section 3(1)(a) of the 1994 Act is an overriding provision which prevents registration of a mark which is so descriptive or so lacking in content capable of performing the function of a trade mark that it cannot be registered; and section 3(1)(b) of the 1994 Act prevents from registration, without proof of distinctiveness, trade marks which are not so wholly lacking in trade mark content as to be registrable at all but which, without

evidence of use, do not display a sufficiently distinctive content.

80. It appears that the oppositions are taken under sections 11(1)(a) and 11(1)(b) of the Ordinance because of the alleged confusing similarity between the subject mark and the Opponent's trade marks. However, I bear in mind that section 11 of the Ordinance deals with absolute grounds for refusal of registration of marks which are concerned with the inherent nature of a mark, and is to be contrasted with section 12 of the Ordinance which deals with the relative rights of an applicant and other parties.
81. There is no explanation in the Opponent's pleadings or evidence why the subject mark does not satisfy the requirements of the definition of a trade mark under section 3(1) of the Ordinance in that it is not capable of distinguishing the subject goods from those of other undertakings or it is incapable of being represented graphically. Apparently, the subject mark is a sign which is capable of being represented graphically, and there is nothing before me from which I could conclude that the subject mark is not a trade mark within the meaning of section 3 of the Ordinance. The opposition under section 11(1)(a) therefore fails.
82. For a mark to possess distinctive character within the meaning of section 11(1)(b) of the Ordinance, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from products of other undertakings. Such distinctiveness must be assessed by reference to, first, the goods or services in respect of which registration is sought and, second, the perception of the relevant persons, i.e. the presumed expectations of an average consumer of the category of goods or services in question, who is reasonably well informed and reasonably observant and circumspect (*Nestlé SA's Trade Mark Application (HAVE A BREAK)* [2004] F.S.R. 2, applying *Linde AG v Deutsches Patent- und Markenamt* [2003] R.P.C. 45).
83. Similarly, the Opponent did not explain why the subject mark is indistinctive of the subject goods. In my view, the subject mark is not merely descriptive of the subject goods and is able to distinguish the subject goods of the Applicant from those of other undertakings. It is therefore not devoid of distinctive character

for the purpose of section 11(1)(b) of the Ordinance.

84. As I have found on a prima facie basis that the subject mark shall not be refused registration by virtue of sections 11(1)(a) and 11(1)(b) of the Ordinance, there is no need for me to consider section 11(2) which concerns acquired distinctiveness based on evidence of use.
85. In fact, it is the Opponent's pleadings that in the absence of evidence of acquired distinctiveness through honest concurrent use of the mark in Hong Kong, the registration of the subject mark should be refused under section 11(2) of the Ordinance.
86. However, as a matter of law, the issue of whether a mark has acquired a distinctive character through use under section 11(2), which arises only if the mark is subject to an objection under section 11(1)(b), (c) or (d), is different and distinct from the idea of honest concurrent use under section 13(1)(a) which permits an applicant to defeat an objection raised, during the course of examination, on the basis of an earlier trade mark or earlier right. The said contention with regard to "absence of evidence of acquired distinctiveness through honest concurrent use of the mark in Hong Kong" is therefore misconceived and must fail.

Opposition under section 11(4)(b) of the Ordinance

87. In the Notice of Opposition, it is pleaded that by virtue of the similarity between the subject mark and the Opponent's trade marks, and the similarity between the subject goods and the goods under the Opponent's trade marks, the registration of the subject mark would be likely to deceive the public and should be refused under section 11(4)(b) of the Ordinance. The Opponent has also based its opposition on the relative ground of refusal under section 12(3).
88. Section 11(4)(b) of the Ordinance provides that a trade mark shall not be registered if it is likely to deceive the public.
89. Section 11(4)(b) is an absolute ground for refusal and is concerned with

deceptiveness which is inherent in the mark itself, as opposed to deception caused by the similarity of the mark to another under section 12.² Whether a mark as a whole is deceptive must be considered against the goods and services applied for and in the general context of the relevant trade. If a mark gives rise to an expectation which will not be fulfilled, then registration will be refused. The expectation must be a real one, as opposed to something obscure or fanciful, arising from the mark itself.³

90. The subject mark is not descriptive of the subject goods and it does not indicate any qualities or characteristics or give rise to any expectation that would not be fulfilled.
91. The Opponent's case relying on the similarity between the subject mark and the Opponent's trade marks does not fall within the ambit of section 11(4)(b). As the Opponent has not put forward a case as to how deception arises from the nature of the subject mark itself, the opposition under section 11(4)(b) must fail.

Opposition under section 11(5)(a) of the Ordinance

92. It is pleaded that the use of the subject mark is prohibited in Hong Kong by virtue of the laws of passing off and the subject mark should be refused under section 11(5)(a) of the Ordinance.
93. Section 11(5)(a) of the Ordinance provides that a trade mark shall not be registered if, or to the extent that its use is prohibited in Hong Kong under or by virtue of any law.
94. Section 11(5)(a) is also an absolute ground for refusal and is concerned with the inherent nature of the mark itself. An objection that use of the subject mark would constitute passing off should be pleaded under section 12(5)(a) of the Ordinance and not section 11(5)(a). For an objection to arise under this subsection, it is necessary for the Opponent to identify a specific provision in the

² *QS by S. Oliver Trade Mark* [1999] R.P.C. 520 at 524; *Kerley's Law of Trade Marks and Trade Names* (15th Edition) para. 8-201.

³ *Kerley's Law of Trade Marks and Trade Names* (15th edition), paragraphs 8-200 and 8-201.

legislation or a specific rule of law which prohibits the use of the subject mark.⁴

95. Since the Opponent has not identified any specific provision of law apart from passing-off, it has failed to establish the ground of opposition under section 11(5)(a) of the Ordinance.

Conclusion

96. The opposition against the subject application fails as none of the Opponent's grounds of opposition has been made out.

Costs

97. As the opposition has failed, I award the Applicant costs. Subject to any representations as to the amount of costs or calling for special treatment, which either party makes within one month from the date of this decision, costs will be calculated with reference to the usual scale in Part I of the First Schedule to Order 62 of the Rules of the High Court (Cap. 4A) as applied to trade mark matters, unless otherwise agreed between the parties.

(Connie Law)
for Registrar of Trade Marks

29 October 2015

⁴ *Kerly's Law of Trade Marks and Trade Names* (15th Edition), paragraphs 8-210 and 8-211.

Annex

No.	Earlier Mark	Registration No.	Registration Date	Class/Goods
1	MENTHOLATUM	199603354	12-1-1995	<u>Class 3</u> bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
2	MENTHOLATUM	199607789	12-1-1995	<u>Class 5</u> pharmaceutical, veterinary and sanitary preparations, and plasters.
3	MENTHOLATUM	300969238	9-10-2007	<u>Class 5</u> Pharmaceutical and veterinary preparations; pharmaceutical preparations for skin care; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, bandages, materials for dressings; healthcare kits for medical purposes; material for stopping teeth, dental wax; disinfectants; antiseptics; preparations for destroying vermin; fungicides, herbicides; cleaning preparations for contact lenses; eye-wash preparations; balms for medical purpose; Chinese medicinal materials; medicinal liquor; all included in Class 5.
4	MENTHOLATUM	199603356	12-1-1995	<u>Class 10</u> surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
5	MENTHOLATUM ACNES	300203723	26-4-2004	<u>Class 3</u> bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; skin care preparations.

				<p><u>Class 5</u> pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides; medicated skin care preparations.</p>
6	MENTHOLATUM AD CREAM	301404918	12-8-2009	<p><u>Class 3</u> Non-medicated creams for face and body; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; toilet soaps; body soaps; shampoos; hair conditioners; incenses; perfumes; cosmetic preparations for skin care; toiletries; lotions for cosmetic purposes; milks for cosmetic purposes; astringent for cosmetic purposes; masks; facial washes; non-medicated lip care preparations; non-medicated lip balms; make-up; make-up removing preparations; cosmetic preparations for bath; bath salts; hand creams; non-medicated body care preparations; non-medicated scrubs for face and body; depilatories; shaving creams; sun-tanning preparations; sunscreen preparations; non-medicated mouth washes; after-shave lotions; hair dyes; colour removing preparations; hair bleaches; disinfectant soaps; tissues impregnated with cosmetic lotions; non-medicated preparations for freshening the breath; false eyelashes; false nails; hair sprays; hair rejuvenating preparations; nail polish; cosmetic preparation for slimming purposes; skin whitening preparations; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; non-medicated preparations for the relief of sunburn; skin cleansing preparations;</p>

				aromatherapy preparations; aromatherapy oil including essential oils and carrier oils; anti-aging skin care preparations; anti-wrinkle creams; skin care lotions for alleviation of spots; petroleum jelly for cosmetic purposes; neutralizers for permanent waving.
7	MENTHOLATUM AD CREAM	199909936	21-8-1998	<u>Class 5</u> medicated creams for soothing of itching of dry skin and skin inflammation and for relief of itching, dermatitis, rash, urticaria, insect bites; all included in Class 5.
8		199500709	10-12-1992	<u>Class 3</u> bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
9	MENTHOLATUM BEAUTY WORKSHOP	300901953	29-6-2007	<u>Class 3</u> Soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; toilet soaps; body soaps; hair conditioners; perfumes; cosmetic preparations for skin care; toiletries; lotions for cosmetic purposes; milks for cosmetic purposes; astringent for cosmetic purposes; masks; facial washes; make-up; make-up removing preparations; cosmetic preparations for bath; hand creams; non-medicated body care preparations; non-medicated scrubs for face and body; disinfectant soaps; cosmetic preparation for slimming purposes; skin whitening preparations; skin cleansing preparations; anti-aging skin care preparations; anti-wrinkle creams; skin care lotions for alleviation of spots; petroleum jelly for cosmetic purposes.
10	MENTHOLATUM DEEP RELIEF	200002178	21-8-1998	<u>Class 5</u>

				pharmaceutical, veterinary and sanitary preparations and plasters.
11	MENTHOLATUM Happy Event	300813906	12-2-2007	<u>Class 3</u> Pre-natal massage and moisturising lotions, balm, creams and oils; pregnancy stretch marks removal and prevention lotions, balm, creams and oils.
12	曼秀雷敦	300969247	9-10-2007	<u>Class 5</u> Pharmaceutical and veterinary preparations; pharmaceutical preparations for skin care; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, bandages, materials for dressings; healthcare kits for medical purposes; material for stopping teeth, dental wax; disinfectants; antiseptics; preparations for destroying vermin; fungicides, herbicides; cleaning preparations for contact lenses; eye-wash preparations; balms for medical purpose; Chinese medicinal materials; medicinal liquor; all included in Class 5.
13	MENTHOLATUM One for all MENTHOLATUM ONE FOR ALL	301851093A A	7-3-2011	<u>Class 3</u> Cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; non-medicated skin cleanser; cosmetic wipes, skin care preparations; personal care preparations for the skin, face; skin lotions, skin creams, skin gels, skin toners, skin moisturizers; astringents for cosmetic purposes; hydrant creams; beauty masks; skin cleansing preparations; skin clarifiers; skin whitening creams; cleansing milk for toilet purposes; cosmetic preparations; cosmetic lotions, gels, powders; make up preparations; lip colours, lip gloss, lipsticks, lip relief preparations; non-medicated lip balm; lip-related cosmetic

				preparations; all included in Class 3.
14	[^] MENTHOLATUM One for all [®] MENTHOLATUM ONE FOR ALL	301851093A B	7-3-2011	<u>Class 5</u> Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides; medicated skin care preparations; medicated skin cleaning preparations; medicated skin lotion; medicated preparations for treatment of acne and pimples; anti-bacterial skin preparations; antibacterial skin wash preparations; pharmaceutical preparations for skin care; bandages, healthcare kits for medical purposes; antiseptics; cleaning preparations for contact lenses; eye-wash preparations; balms for medical purpose; all included in Class 5.
15	[®] mentholatum Organic [®] mentholatum Organic	301587051	14-4-2010	<u>Class 3</u> Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; non-medicated lip care preparations; lip coatings; lip liners; lip pomades; lip balms; lip protectors; lipsticks; sun blocking lipsticks (cosmetics). <u>Class 5</u> Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; medicated lip care preparations; medicated lip coatings; medicated lip products; medicated lip balms; sun blocking lipsticks for

				medical use; disinfectants; preparations for destroying vermin; fungicides, herbicides.
16	* MENTHOLATUM ORGANIC CERTIFIED LIPBALM * Mentholatum Organic Certified Lipbalm	301587060	14-4-2010	<p><u>Class 3</u> Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; non-medicated lip care preparations; lip coatings; lip liners; lip pomades; lip balms; lip protectors; lipsticks; sun blocking lipsticks (cosmetics).</p> <p><u>Class 5</u> Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; medicated lip care preparations; medicated lip coatings; medicated lip products; medicated lip balms; sun blocking lipsticks for medical use; disinfectants; preparations for destroying vermin; fungicides, herbicides.</p>
17	MENTHOLATUM PERFECT WASH	300888382	8-6-2007	<p><u>Class 3</u> Soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; toilet soaps; body soaps; shampoos; hair conditioners; incenses; perfumes; cosmetic preparations for skin care; toiletries; lotions for cosmetic purposes; milks for cosmetic purposes; astringent for cosmetic purposes; masks; facial washes; non-medicated lip care preparations; non-medicated lip balms; make-up; make-up removing preparations; cosmetic preparations for bath; bath salts; hand creams; non-medicated body care preparations; non-medicated scrubs for face and body; depilatories; shaving creams; sun-tanning</p>

				preparations; sunscreen preparations; non-medicated mouth washes; after-shave lotions; hair dyes; color removing preparations; hair bleaches; disinfectant soaps; tissues impregnated with cosmetic lotions; non-medicated preparations for freshening the breath; false eyelashes; false nails; hair sprays; hair rejuvenating preparations; nail polish; cosmetic preparation for slimming purposes; skin whitening preparations; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; non-medicated preparations for the relief of sunburn; skin cleansing preparations; aromatherapy preparations; aromatherapy oil including essential oils and carrier oils; anti-aging skin care preparations; anti-wrinkle creams; skin care lotions for alleviation of spots; petroleum jelly for cosmetic purposes; neutralizers for permanent waving.
18	MENTHOLATUM SOFTLIPS	200013803	10-2-1998	<u>Class 5</u> medicated lip balms included in Class 5.
19	曼秀雷敦 天然活性炭	300726877	21-9-2006	<u>Class 3</u> Cosmetics, creams, milks, lotions, gels, powders and serum for the face, the body and the hands; lipsticks, lip gloss, lip gels and lip balms; facial cleansers; moisturizers; mascaras; toners; make-up preparations; make-up removing preparations; cosmetic preparations for slimming, whitening and facial and body shaping purposes; suntan preparations; self-tanning preparations; sunscreen preparations; non-medicated creams, milk, lotions, gels, powder and serum for clearance of acne; non-medicated creams, milk, lotions, gels, powder and serum for controlling and clearing of facial sebum; cosmetic pencils; nail

				<p>care preparations; nail care varnish; nail polish; false nails; false lashes; cotton sticks, wool and wipes for cosmetic purposes; shaving preparations; shampoos; hair conditioners; gels, sprays, mousses and balms for hair styling and hair care; hair colouring and hair decolourant preparations; hair permanent waving and curling preparations; hair straightening preparations; beauty masks; toiletries; mineral water sprays for cosmetic purposes; shower gels; body washes; body preparations; manicure preparations; tanning and after-sun milks, gels and oils; body deodorants; perfumery; toilet water; essential oils; soaps; anti-perspirants; toothpastes; tooth care preparations; tooth cleaning preparations; tooth whitening preparations; dentifrices; cosmetic kits.</p>
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