

TRADE MARKS ORDINANCE (CAP. 559)

OPPOSITION TO TRADE MARK APPLICATION NO. 301584955



MARK:

CLASS: 31

APPLICANT: CHANG, YING LAU

OPPONENT: TIFFANY AND COMPANY

STATEMENT OF REASONS FOR DECISION

Background

1. On 13 April 2010, the Applicant filed an application for registration (“the subject application”) under the Trade Marks Ordinance (Cap. 559) (“the Ordinance”) for the registration of the following mark :-



(“the suit mark”).

2. Registration is sought in respect of “Natural Plants and Flowers” in Class 31.

3. Particulars of the subject application were published on 7 May 2010. The Opponent filed a notice of opposition with the “grounds of opposition” (“Grounds of Opposition”) on 21 September 2010. The Applicant filed a counter-statement on 5 October

2010. The Applicant was subsequently granted leave to file an amended counter-statement on 1 February 2011 (“the amended counter-statement”).

4. The opposition hearing was heard on 4 April 2014. Mr. Philips B. F. Wong, counsel instructed by Robin Bridge & John Liu, appeared for the Opponent at the hearing. The Applicant was represented by Ms. Isabella Leung of Edward C.T. Wong & Co..

5. I reserved my decision at the conclusion of the hearing.

Grounds of opposition

6. The Opponent opposes registration of the suit mark on a number of grounds, namely sections 12(3), 12(4), 12(5)(a) and 11(5)(b) of the Ordinance.

Relevant date

7. The relevant date for considering the opposition is 13 April 2010, the date of the subject application.

Evidence

8. Under Rule 18 of the Trade Marks Rules (Cap.559, sub. leg.)(“Rule/s”), the Opponent filed a statutory declaration made by Naina L. Rasheed, together with exhibits, which was declared on 19 October 2011 (“Rasheed’s statutory declaration”).

9. Under Rule 19, the Applicant filed the Affidavit of Yiu Yun Tiffany, together with exhibits, which was sworn on 25 April 2012 (“Yiu’s affidavit”).

10. Under Rule 20, the Opponent filed the statutory declaration of Loo Wan Ching, together with exhibits, which was declared on 26 October 2012 (“Loo’s statutory declaration”).

Rasheed's statutory declaration

11. Ms. Rasheed is Assistant Secretary of the Opponent, a company incorporated in the United States. She joined the Opponent in May 2000 and had served in various capacities within the Opponent prior to the appointment as Assistant Secretary in May 2007.

12. The Opponent owns numerous registrations and applications for registration in Hong Kong which contain the word "TIFFANY" or the characters "蒂芙尼" (the transliteration for "TIFFANY" in Chinese) or "T & Co." (the short form for "TIFFANY & COMPANY"). Ms. Rasheed sets out a list of 20 registered marks comprising these marks as well as other marks bearing the word "TIFFANY" and marks constituted by the elements "T", "C", "&" and "O"¹ (collectively "the Opponent's marks").

13. The Opponent² first registered the trade mark incorporating "TIFFANY" in the United States. It subsequently obtained registrations or applied for registration for trade marks incorporating "TIFFANY", "TIFFANY & CO", "TIFFANY" in local language and/or "T & CO." in over 125 countries. Exhibit NR-2 contains a non-exhaustive list of such registrations and copies of some registration and/or renewal certificates.

14. Mr. Charles Lewis Tiffany, founder of the Opponent, first opened a shop in New York City in 1837. Since then, the Opponent has used the mark "TIFFANY" on its luxury goods globally. "Tiffany and Company" was incorporated in the United States in 1868, and the Opponent has been using "TIFFANY" as the sole distinctive element of its trading name.

15. Ms. Rasheed avers that the Opponent has long enjoyed an international reputation for, among other things, the design of jewellery, household silver, and presentation pieces. Since 1837, the Opponent's principal products have been jewellery made from gemstones and precious metals, and a wide variety of other products including but not limited to fine china and crystal; watches and clocks; hollowware, vases; fancy accessories for personal use made of precious metals; stationery, invitations and writing instruments; desk

¹ Paragraph 4 of statutory declaration. The marks are registered mainly in respect of goods in different classes. All except one of the marks stated in the list have dates of registration earlier than the date of the subject application. Exhibit NR-1 contains printouts of the records retrieved online from the database of the Hong Kong Trade Marks Registry. The earliest one is a TIFANY mark registered on 3 November 1987 in respect of various goods in Classes 8, 14 and 21.

² In this decision, the references to the Opponent also include its predecessors, as the case may be.

accessories; accessories for personal wear or use, including scarves, ties and fragrances; tea and coffee services; trays, cups and trophies commissioned for presentation or commemorative purposes. The Opponent offers items including jewellery for weddings and other celebration events, and vases and other containers for flowers, through its stores and on its website. It also engages in the business of design, manufacture and sale of collection of high quality luxury consumer items for personal and household use (including vases) and adornment as well as the provision of related services.

16. Throughout its history, the Opponent has employed and invited notable designers to design the Opponent's goods including vases, nature and floral inspired jewellery and household items.³

17. Exhibits NR-11 and NR-12 contain copies of articles touching on the Opponent's history and role as a source of jewellery and other luxury goods.⁴

18. Paragraphs 25 to 27 of the statutory declaration deal with the limited licensing authorised by the Opponent on eyewear and watches.

19. Ms. Rasheed then refers to the recognition of the "TIFFANY" mark as one of the most famous trade marks in the United States and the recognition of the Opponent's reputation globally.⁵ Specifically, she avers that the Opponent's reputation had been recognised in the judgment of the High Court of Hong Kong delivered in April 1995 in *Re Omega (Trade Marks)* HCMP 43/1995 (unreported, copy at Exhibit NR-22).

³ Exhibit NR-9 contains printouts from the Opponent's website www.tiffany.com featuring a list of journals and books together with some selected copies. Several books by author John Loring documented the use of nature themes in the Opponent's products, including a set of books devoted to "Tiffany Flora and Fauna" (copy produced at Exhibit NR-10). An article entitled "Charles Tiffany's 'fancy goods' shop and how it grew" at Exhibit NR-11 featured images of vases, flatware and other household items incorporating floral and nature motifs. Flowers and/or plants also appeared dominantly in the designs of the Opponent's goods (paragraph 71 of statutory declaration).

⁴ The majority of the articles at Exhibit NR-12 were published in different countries between the 1980s and 2007, whilst some articles were published in the late 19th century. Paragraphs 18 to 23 of the statutory declaration cover work commissioned by royal families in Europe in as early as the 1890s and awards conferred on the Opponent since 1867. Copies of the documents produced as Exhibits NR-13, NR-14, NR-15 and NR-16 provide information on the commissions and awards received by the Opponent in the United States and internationally.

⁵ Paragraphs 28 to 33 of the statutory declaration. Copies of documents including a decision of the United States Court of Customs and Patent Appeals issued in 1962 and extracts from texts such as "Famous and Well-Known Marks – An International Analysis" by Frederick Mostert are produced at Exhibits NR-18, NR-19 and NR-20. Copies of some selected decisions issued by tribunals in various countries are produced as Exhibit NR-21. Exhibits NR-23 and NR-24 contain copies of judicial decisions on successful enforcement actions taken by the Opponent in Cyprus and Korea against other traders using the word "TIFFANY" in business.

20. Paragraphs 34 to 41 of the statutory declaration deal with the Opponent's business internationally. As of 31 January 2011, the Opponent's goods were available in 233 TIFFANY & CO. retail locations worldwide. Approximately 4,400 products marked with the Opponent's marks are available for sale online at www.tiffany.com website. The Opponent's goods are also sold through independent distributors.

21. Ms. Rasheed deposes that from May 2004 to 20 July 2011 there were over 1.83 million unique visits of the www.tiffany.com website from Internet browsers located in Hong Kong. Since October 2010, there were over 315,000 visits to zh.tiffany.com, the Opponent's website in traditional Chinese, from Internet browsers located in Hong Kong.

22. In 2008, 2009 and 2010, sales of TIFFANY & CO. brand jewellery accounted for, respectively, 87%, 90% and 91% of the Opponent's net sales, which reflected the popularity of the Opponent's jewellery. Figures of the worldwide sales from 1986 up to 30 April 2011 and the annual breakdown are set out in paragraph 41 of the statutory declaration.

23. The first retail shop in Hong Kong was opened on 4 August 1988. As of October 2011, goods bearing the Opponent's marks were available in 10 retail outlets. The total sales revenue derived in Hong Kong from 2000 to 2010 amounted to at least US\$823 million. The annual breakdown of the figures are set out in paragraph 46 of the statutory declaration. As illustrations, the annual sales figures for 2008, 2009 and 2010 are US\$98.7 million, US\$122.3 million and US\$170.9 million respectively. Copies of some commercial invoices bearing dates in 1993 and some dated 2004 up to 2009 are adduced as Exhibit NR-26.

24. Paragraphs 49 to 65 of the statutory declaration deal with the worldwide advertisement and promotion of the Opponent's goods and services. The annual expenditures spent in Hong Kong from 1999 to 2010 can be found at paragraph 51, which added up to more than US\$24 million. Copies of some articles featuring the Opponent's history and reputation, together with advertisements posted in local publications including Elle, Hong Kong Tatler, Hong Kong Economic Times and Marie Claire can be found in Exhibit NR-29.

25. According to Ms. Rasheed, the Opponent's international fame was also extended as the Opponent, its goods and/or marks were featured in movies⁶ also shown in Hong Kong and as a result of celebrities wearing the Opponent's jewellery.

26. Ms. Rasheed produces Exhibit NR-37 which is a copy of a report entitled "Our Environmental and Social Commitments" detailing the Opponent's environmentally conscientious business practices and the philanthropic endeavours of The Tiffany & Co. Foundation on arts and environment. Exhibit NR-38 is a printout from the website of the Foundation showing grants made to support organisations dedicated to conservation of natural resources.

27. Ms. Rasheed avers that the business of the Tiffany Flowers shop is closely associated with the Opponent's wedding and celebratory-related business. She relates to the Opponent's legendary engagement rings, the product line of engagement and wedding jewellery, together with the operation of a "Wedding and Gift Registry" and a "Bridal Registry" which provide information to consumers on wedding gifts and jewellery. Exhibit NR-40 contains a printout from the Opponent's website, referring to "Tiffany engagement rings" and the "Wedding & Gift Registry". Exhibit NR-41 is a printout from wedding.esdlife.com referring to the Opponent's engagement rings, other jewellery and its shop address at Pacific Place.

28. Ms. Rasheed observes that it is commonplace for luxury brands to extend their businesses to include lifestyle products and services, such as household goods and even florist services, such as agnès b Fleuriste by agnès b and Armani Fiori by Armani in Hong Kong. Exhibit NR-42 contains printouts from websites showing information on these florist shops.

29. Paragraphs 77 to 81 of the statutory declaration set out the Opponent's allegation of bad faith against the Applicant. In particular, it is alleged that by adopting and seeking to register the suit mark, the Applicant is seeking to take advantage of the Opponent's reputation and goodwill in the Opponent's marks by leading the public into the mistaken belief that the Applicant's goods are provided by the Opponent and/or that such services are an extension of the Opponent's services.

30. Ms. Rasheed points out that the mark used by the Applicant and/or in connection

⁶ Including the movie "Breakfast at Tiffany's" which was shown in Hong Kong in June 1962.

with the florist business is only “TIFFANNY FLOWERS”, without the characters “姚欣店”. A one-page printout from the www.tiffanyflowers.com website and a copy of a photograph of the shop front of “TIFFANNY FLOWERS” are produced at Exhibit NR-33. Another printout from the website with a photograph of the shop front can be found at Exhibit NR-39. In addition, she also refers to Exhibits NR-34 and NR-35 being printouts from comtools.esdlife.com/wedding_forum, wedding.100fun.com and hk.88DB.com where Tiffany Flowers shop was misspelt as “Tiffany Flowers”.⁷

31. Ms. Rasheed also refers to the ownership of the Tiffany Flowers business with reference to some exhibits. According to business registration information at Exhibit NR-43, as at June 2007, Ms. Yiu Yun Tiffany was not a partner of Tiffany Flowers. From 11 June 2009 onwards, the Applicant ceased to be a partner in the business, and a Mr. Cheong Wai Chi (“Mr. Cheong”), formerly in partnership with the Applicant, became the sole proprietor.

32. I do not intend to summarise the rest of the statutory declaration which mainly covers Ms. Rasheed’s views on the suit mark and the subject application.

Yiu’s affidavit

33. According to Ms. Yiu, she is one of the co-founders of the business “姚欣店 TIFFANNY FLOWERS”. The other founder is Mr. Cheong, Ms. Yiu’s husband. Her name in English is “Yiu Yun Tiffany”, and her name in Chinese is “姚欣”. Exhibits respectively marked YYT-1a, YYT-1b, YYT-1c and YYT-1d are copies of Ms. Yiu’s birth certificate, identity card and certificate of baptism showing the name “Tiffany”, and copies of some webpages on the word “Tiffany” and its meaning.

34. Ms. Yiu deposes that Mr. Cheong and she commenced the business of Tiffany Flowers, named after her personal name, in or about April 1994. Since mid-2002, the Chinese name “姚欣” was added and the business name became “姚欣店 TIFFANNY FLOWERS”. Exhibits YYT-4 and YYT-7 are copies of the business registration certificates

⁷ wedding.100fun.com is a Hong Kong website providing wedding information. I observe the characters “姚欣店” appear above “TIFFANNY FLOWERS” on the printout. hk.88DB.com is a Hong Kong website on classified service providers. There is a description written in Chinese referring to Tiffany having experience in operating florist shop for 16 years, with customers who are the celebrities of the city.

for the years 1994-1995, 2007-2008, 2008-2009 and 2009-2010 respectively.⁸

35. The Applicant is the father of Mr. Cheong, as evidenced by the copy of a birth certificate at Exhibit YYT-2. Ms. Yiu avers that in or about 2002, due to financial difficulties of Mr. Cheong and Ms. Yiu, the Applicant contributed some funds to the Tiffany Flowers business and the business was transferred to the Applicant. However, Mr. Cheong and Ms. Yiu remained responsible for the daily activities of the florist business. It is their intention that after the financial conditions have improved, the business will be transferred back to them.

36. According to Ms. Yiu, the suit mark was designed by a well-known designer Mr. Au-Yeung Ying Chai, and Mr. Cheong and Ms. Yiu had been using the mark since they commenced business. Exhibits YYT-5a and YYT-5b are copies of two undated business cards bearing the words “TIFFANNY FLOWERS (姚欣店)” and a copy of a confirmation letter from Homework Production Limited, the designer’s company, confirming that it designed the logo and the letterhead in 1994.⁹

37. Ms. Yiu states that there is no intention to deceive the public into believing that the florist business is associated with the Opponent. A different colour scheme i.e. green and peach is used in the suit mark, as opposed to the light blue colour of the Opponent.¹⁰ The website of Tiffany Flowers has a simple design containing photographs of flowers and the blue colour is not used in the website. The business card adopts green and peach colours and the words “TIFFANNY FLOWERS (姚欣店)” are printed as the business name. The words are printed on all their invoices, and a copy of a sample invoice is produced as Exhibit YYT-9.

38. Ms. Yiu deposes that Tiffany Flowers was appointed for flower and plant arrangements of the venues of many functions including conferences and wedding banquets.

⁸ In paragraph 20 of Loo’s statutory declaration, Ms. Loo produces Exhibit LWC-7 which shows that “Tiffany Flowers Limited” was dissolved by deregistration in 2001 according to section 291AA of the Companies Ordinance. The grounds for the application for deregistration was that it has “ceased to carry on business or ceased operation for more than 3 months immediately before the application”.

⁹ The logo appearing on the business cards and the confirmation letter is an elongated version of the background of the suit mark (i.e. 4 rectangles instead of 4 squares) without any words.

¹⁰ According to the “Trademark Records By Country” in Exhibit NR-2 to Rasheed’s statutory declaration, the Opponent’s “Blue Box” with the words “TIFFANY & CO.” are registered in respect of some classes in Hong Kong and some countries. The blue colour (known as Robin’s egg blue) also appears in some copies of the annual reports, brochures, advertisements and printouts from websites produced as exhibits.

It has many corporate customers and other customers including celebrities¹¹ in Hong Kong, and has acquired reputation as one of the best florists in Hong Kong. Ms. Yiu produces copies of reports and photographs showing the flower and plant arrangements rendered by Tiffany Flowers, and there were acknowledgements of the services rendered by Ms. Yiu personally dating back to the mid-1990s.¹² Particulars of Tiffany Flowers frequently appear in magazines and directories on wedding and home decoration, as listed in Exhibit YYT-16. Copies of some favourable comments posted online by customers of Tiffany Flowers are produced as Exhibit YYT-14.

39. Tiffany Flowers promoted its reputation by acting as sponsors of flower arrangements or bouquets for, among others, magazines and newspapers on their reports on artists and celebrities¹³, and magazines on home decoration¹⁴. As flowers for wedding is a major business of Tiffany Flowers, it also sponsors flower bouquets and flower head dresses for wedding magazines.¹⁵ The estimated value of sponsorship of bouquets is about HK\$9,000 to \$10,000 per month.

40. In July 2005, Ms. Yiu published a book entitled “花嫁” (meaning “flowers and marrying”) featuring articles and photographs on flower designs and venue decoration. Copies of photographs of the book launch and the contents of the book are produced as Exhibit YYT-21. Ms. Yiu was also the author of another book entitled “花心思煮意 Tiffany Secret Recipes” printed in both Chinese and English.¹⁶

41. To promote the business, Ms. Yiu has a cordial relationship with the media, and many articles were published over the years featuring Tiffany Flowers and/or Ms. Yiu personally. From time to time, she was interviewed as an expert in flower arrangements.¹⁷ Copies of these articles, many of which also show the pictures of Ms. Yiu and her work can be

¹¹ For example, Exhibit YYT-19 contains copies of reports from newspapers and magazines on 3 wedding banquets of celebrities held in 1996, 1998 and 1999.

¹² For instance, in a publication “BEST OF THE BEST” published by Island Shangrila in 1995, there is an acknowledgement which reads “Flower Arrangement : TIFFANNY YIU FOR TIFFANNY FLOWERS” (page 47 of the exhibits to Yiu’s affidavit).

¹³ A list of sponsorships provided to celebrities and artists mostly in the 2000s together with reports and photographs are produced at Exhibit YYT-17. Exhibit YYT-31 shows the occasions where the florist shop was used as background for photographs.

¹⁴ Exhibit YYT-18 contains a list of sponsorships provided to magazines on home decoration from 1994 to 2008 with copies of the publications.

¹⁵ Exhibit YYT-20 contains a list of sponsorships provided to wedding magazines from 1994 up to December 2011 with copies of reports and pictures.

¹⁶ Copies of selected pages are produced at pages 1270 to 1280 of the exhibits to Yiu’s affidavit.

¹⁷ One of the earlier interviews was reported in Sunday Morning Post on 30 June 1996 (page 875 of the exhibits to Yiu’s affidavit) referring to Ms. Yiu as a “florist” and “floral designer”.

found in Exhibits YYT-23 to YYT-29.¹⁸ Exhibit YYT-30 contains copies of reports and photographs on the Tiffany Flowers shop at Lane Crawford of Pacific Place in 1996 and on the 8th anniversary party in August 2002 which were attended by movie stars and singers. Copies of advertisements posted in magazines can be found at Exhibit YYT-32.

42. I do not intend to summarise the rest of the statutory declaration which mainly covers Ms. Yiu's arguments in relation to the proceedings.

Loo's statutory declaration

43. Ms. Loo, a partner of Robin Bridge & John Liu, has been authorised by the Opponent to make the statutory declaration on its behalf in support of the opposition.

44. She avers that none of the evidence contained in Yiu's affidavit pertain to actual use of the suit mark, and the evidence only relates primarily to use of the plain word(s) "TIFFANY", "TIFFANNY" or "TIFFANNY FLOWERS", whether on its own or placed against a background consisting of green or peach rectangles or squares. The majority of the instances of use relate to use of the plain words, i.e. without the rectangular or square device.

45. Ms. Loo produces Exhibit LWC-1 being a printout from www.babynamespedia.com website to show that "Tiffanny" is a variant spelling of "Tiffany" not readily distinguishable from "Tiffany", and both share the same meaning of "manifestation of god". Exhibit LWC-2 are printouts from two other websites indicating that the name "Tiffany" is "*associated with Tiffany & Co., the New York jeweler, giving it connotations of upper-class luxury*" and "*is a luxury brand of jewelry*".

46. She observes that the name of the Applicant's florist shop as appeared on the directory of the Home Journal magazine in various months between 2004 and 2007 is "Tiffany Flowers", and there were numerous different references by news reports and/or customers' reference to the Applicant's florist business as "Tiffany Flowers". A printout from an online forum at Exhibit YYT-14 to Yiu's affidavit showed the post of one blogger who thought, upon seeing a bouquet from "Tiffany Flowers", that the design was similar to that of agnès b Fleuriste. "Tiffanny Flowers" was also compared with or introduced

¹⁸ The articles cover themes at different times of the year such as Chinese New Year, Valentine's Day, Christmas, Mother's Day, Easter and Mid Autumn Festival.

alongside agnès b Fleuriste in a few newspaper articles (Exhibits LWC-3 and LWC-4).

47. According to Ms. Loo, it is well known and common in recent years that fashion houses, apparel and accessories brands often expand their fashion and jewellery businesses over the years to include services such as florist and catering services, and customers would believe that such goods and services are designed, associated with, licensed or endorsed by the trade mark owner concerned. Agnès b, Giorgio Armani, Alfred Dunhill are given as examples. She also refers to the common trade practice where such extended line of businesses are offered in separate retail space from the boutiques selling clothing and accessories.

48. The rest of Loo's statutory declaration mainly covers observations on the opposition proceedings and responses to arguments averred in Yiu's affidavit which I do not intend to summarise.

Opposition under section 12(3) of the Ordinance

49. 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.”

50. 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.

51. 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 *Marca Mode CV v Adidas AG* [2000] E.T.M.R.723. The principles which have been adopted in the Hong Kong case of *Guccio Gucci SpA v Gucci* [2009] 5 HKLRD 28 are as follows:

- (a) The likelihood of confusion must be appreciated globally, taking account of all the 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 the court must determine the degree of visual, aural or conceptual similarity between them and, where appropriate, evaluate the importance to be attached to those different elements taking into account the nature of the goods in question and the circumstances in which they are marketed.
- (d) The visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components. The perception of the marks in the mind of the average consumer plays a decisive role in the overall appreciation 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 trademark has a highly distinctive character, either *per se* or because of the use that has been made of it.
- (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; further the average consumer's level of attention is likely to vary according to the category of goods in question.

- (h) Appreciation of the likelihood of confusion depends upon the degree of similarity between the goods. A lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and *vice versa*.
- (i) Mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purpose of the assessment.
- (j) But the risk that the public might believe that the goods come from the same or economically linked undertakings does constitute a likelihood of confusion within the meaning of the section.

52. 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 suit mark and the Opponent's marks and the goods covered, and whether they would combine to create a likelihood of confusion.

53. The applied for goods are natural plants and flowers. These goods cover a range of varieties and prices and are provided to the general public in Hong Kong at large. The applied for goods are often sold in retail outlets such as florist shops, supermarkets and markets. The level of care and attention which is exercised by the relevant consumers is only average but is not likely to be high. They are deemed to be reasonably well informed and reasonably observant and circumspect.

54. I will first compare the suit mark and the marks relied on by the Opponent.

The Opponent's marks

55. According to the Opponent, each of its marks which has been registered in Hong

Kong¹⁹ is an “earlier trade mark” as defined in section 5(1) of the Ordinance. In addition, each of the Opponent’s marks is entitled to protection under the Paris Convention as a well-known trade mark. At the hearing, Mr. Wong specifically relied on the following three “TIFFANY” marks which have been registered in Hong Kong and some of the goods and services registered under the respective marks –

Trade mark and trade mark no.	Date of registration	Specification (extracts)²⁰
<p style="text-align: center;">TIFFANY (no. 1989B1691AA)</p>	<p style="text-align: center;">3 November 1987</p>	<p><u>Classes 8, 14, 21</u></p> <p><i>Inter alia</i>, “decorative subjects fashioned of or plated with precious metals, vases, glassware and crystal, articles made of glass and crystal.”</p>
<p style="text-align: center;">TIFFANY (no. 199302992)</p>	<p style="text-align: center;">2 March 1992</p>	<p><u>Class 35</u></p> <p><i>Inter alia</i>, “marketing and promotion of crystal and glassware, decorative accessories made of or in part of precious metals or porcelain or enamel or lacquered wood for the home, silver hollowware.”</p>
<p style="text-align: center;">TIFFANY (no. 199700683)</p>	<p style="text-align: center;">2 March 1992</p>	<p><u>Class 42</u></p> <p><i>Inter alia</i>, “retail store services relating to crystal ware, glassware, decorative accessories made of or in part of precious metals or porcelain or enamel or lacquered wood, silver hollowware.”</p>

¹⁹ The marks are set out in Schedule A to the Grounds of Opposition.

²⁰ The goods and services set out in this column follow those identified by Mr. Wong in his skeleton submissions. As I understand it, these goods and services are of most relevance to the opposition. The specifications of these registrations in full are set out in Annex A.

56. The “TIFFANY” marks set out above are simple word marks in capital letters without stylisation. The distinctiveness lies in the word itself. As the three marks do not differ in terms of distinctiveness, I will take them as one “TIFFANY” word mark for comparison and discussion.²¹

57. Mr. Wong submitted that the “TIFFANY” mark has high inherent distinctiveness in respect of the goods and services registered, and the distinctiveness of the mark has been enhanced through the extensive use of the mark throughout the years.

58. The “TIFFANY” mark is not descriptive of the Opponent’s goods and services concerned and is inherently distinctive. Upon examination of the evidence adduced on the sales and promotion of goods marketed under the “TIFFANY” mark in Hong Kong over the years, I am satisfied that the distinctiveness of the “TIFFANY” mark has been enhanced in respect of jewellery before the date of the subject application.

The suit mark

59. The Opponent contends that the suit mark incorporates the word “TIFFANNY”, which is almost identical or highly similar to the “TIFFANY” mark aurally, visually and conceptually. The only difference lies in the additional letter “N” in the word “TIFFANNY”. This however does not alter the aural pronunciation. The additional letter “N” also does not render a visual impression different from “TIFFANY” as the two letters “N” are placed next to each other and will therefore be unnoticeable by the public. The word “TIFFANNY” is the most distinctive and dominant component of the suit mark. The word “FLOWERS” is directly descriptive of the applied for goods and is indistinctive. The Chinese characters in the suit mark do not possess any literal meaning on their own, will be perceived simply as the Chinese name for “TIFFANNY FLOWERS”, and do not convey any specific meaning to distinguish the suit mark from the Opponent’s “TIFFANY” or “TIFFANY & CO.” marks.²²

60. Mr. Wong submitted that the word “TIFFANNY” is the most or one of the most distinctive and dominant elements in the suit mark. As “TIFFANNY” is distinctive in relation to natural plants and flowers, the relevant members of the public will be able to

²¹ The Opponent also relies on the “TIFFANY” word mark for the opposition under section 12(4) and section 12(5)(a).

²² Paragraph 13, Grounds of Opposition.

remember the word “TIFFANNY”. He further submitted that whilst the Chinese characters may also be distinctive in relation to the applied for goods, the characters are meaningless to those English speaking members of the public who do not read Chinese.

Comparison of marks

61. The suit mark is a composite mark constituted by the words “TIFFANNY FLOWERS 姚欣店” setting against a square background formed by 4 smaller squares. Although the words “TIFFANNY FLOWERS” are larger in size than the characters “姚欣店”, the two rows of words appear prominently in the middle of the suit mark. The square on the upper left is peach in colour and the one on the lower right is largely light green in colour. The other two squares are white in colour. There are some irregular shapes in green in the square on the upper right and some shapes in peach colour in the one on the lower left.²³

62. The word “TIFFANNY” is distinctive in relation to the applied for goods. The word “FLOWERS” is descriptive of the applied for goods and is indistinctive. The Chinese characters “姚欣” do not evoke any particular meanings and are also distinctive. The Chinese character “店” (which means “shop”) is indistinctive. Whilst the background of the suit mark renders some visual impact, the consumers would pay more attention to the word elements of the mark. However, I do not agree with the contention that the word “TIFFANNY” stands out as the most distinctive and dominant component. I consider both “TIFFANNY” and “姚欣” are dominant and distinctive, and the suit mark conveys an overall impression of a composite mark constituted by a device and word elements in English and Chinese.

63. Comparing the suit mark and the “TIFFANNY” mark visually, the only similarity lies in the word “TIFFANNY” in the suit mark. The word “TIFFANNY” differs from the “TIFFANY” mark for having two letters “N”. I agree that the additional letter “N” may not be noticed by the consumers, and the two words are highly similar visually. The suit mark contains the Chinese characters “姚欣店” and the background which would also be noticed by the consumers. I find that the two marks are visually similar to a moderate degree.

64. Aurally, the suit mark would be pronounced “TIFFANNY FLOWERS 姚欣店”

²³ There is no colour claim in the subject application.

or “TIFFANNY 姚欣”. As the words “TIFFANNY” and “TIFFANY” bear the same pronunciation, they are aurally identical in that respect. However, the characters “姚欣” or “姚欣店” would also be pronounced in oral reference. Aurally, I find the two marks similar to a moderate degree.

65. Conceptually, both “TIFFANNY” and “TIFFANY” would be perceived as female names. The presence of the additional “N” in the suit mark is unlikely to change such perception. However, the suit mark also contains the characters “姚欣” which bear no resemblance or connection with the word “TIFFANY”. The word “姚” is commonly understood as a surname in Chinese and it has no other meanings conceptually. The character “欣” which means “happy, joyful”²⁴ is often used as part of a name in Chinese. The characters “姚欣” together would convey the concept referring to a personal name. Conceptually, I find that the suit mark and the “TIFFANY” mark is moderately similar.

66. Taking the suit mark and the “TIFFANY” mark as wholes and the overall impression they give respectively, I find that the suit mark and the “TIFFANY” mark are similar to a moderate degree only.

Comparison of goods

67. I am required to consider the goods and services for which the “TIFFANY” marks concerned are registered, as well as the goods for which the suit mark is sought to register. The Opponent’s registered goods as set out in Annex A do not cover natural plants and flowers. I then have to consider whether the Opponent’s registered goods and services are similar to the applied for goods.

68. 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 Jacob J. (as he then was) considered, at page 296, the following factors to be relevant in determining whether or not there is similarity :

²⁴ From <http://humanum.arts.cuhk.edu.hk/Lexis/Lindict/>

- (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 service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) 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
- (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.

69. It is also stated at paragraph 23 of the *Canon* case that 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.

70. Mr. Wong submitted that the applied for goods are similar to some of the registered goods such as vases, glassware and other decorative objects which are often used with plants and flowers. Both are primarily used for decorative purposes and are concerned with aesthetic appeal.²⁵ Vases and flowers are complementary to and used along with each other, and the “users” of vases are often “users” of flowers. Flowers and containers for flowers are often available through the same market channels. He also referred to the Applicant’s evidence that the Applicant’s shop sells both flowers and containers for flowers.

²⁵ At the hearing, Mr. Wong submitted some selected pages from Exhibits NR-6, NR-9, NR-10, NR-14 and NR-29 to Rasheed’s statutory declaration which show some vases of the Opponent.

71. Although natural plants and flowers are often used for decorative purpose, I wish to point out that they are live and perishable as opposed to the Opponent's vases, glassware and other decorative objects which are man-made and durable in nature. The physical nature of the goods is very different.

72. Natural plants and flowers are purchased by members of the public as gifts or for use for display or decorative purpose over a transient duration, whilst the Opponent's goods are purchased by consumers who look for decorative objects which are durable.²⁶ Natural plants and flowers are usually relatively inexpensive and may be regarded as everyday items. It is unlikely that natural plants and flowers and the Opponent's vases and other decorative objects are in competition with each other. As to trade channels, natural plants and flowers are sold at channels such as florist shops, supermarkets and markets, whilst the Opponent's vases, glassware and other decorative objects are often offered at retail shops and department stores. Although vases are sometimes sold together with flowers or plants at florist shops, there is no evidence that traders who manufacture vases would also grow or market their own flowers or plants to be sold along with their vases, or vice versa.

73. On the contention that vases and flowers are complementary and they are used with each other, I note the observation made by Mr. Daniel Alexander QC, Appointed Person, on the concept of complementarity in a UK decision -

*"...It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes."*²⁷

74. I do not agree that the fact that vases and flowers are often used with each other would make them similar goods for trade mark purposes. In fact, complementarity is only one of the relevant factors to be considered in assessing the degree of similarity between goods.

75. An analysis based on the Opponent's registered services set out in paragraph 55

²⁶ Mr. Wong contended that both the Applicant and the Opponent target high profile customers and celebrities. The evidence from the Applicant does not reveal that the goods offered under the suit mark are only confined to high profile customers and celebrities. I am concerned with notional and fair use. Natural plants and flowers are offered to members of the public at large and are not confined to a particular sector of the public.

²⁷ *Elliott's trade mark application (LUV Trade Mark)* [2014] R.P.C.13, paragraph 18.

above which relate to marketing and promotion, and retail store services of a range of decorative objects also do not support a finding of any similarity between such services and the applied for goods.

76. I conclude that the applied for goods are not identical or similar to the goods and services covered by the Opponent's registrations concerned.

Likelihood of confusion

77. 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.

78. Section 7(2) of the Ordinance provides :

“(2) For greater certainty, in determining for the purposes of this Ordinance whether the use of a sign is likely to cause confusion on the part of the public, the Registrar or the court may take into account all factors relevant in the circumstances, including whether the use is likely to be associated with a registered trade mark.”

79. In the judgment of the *Guccio Gucci* case, Deputy Judge Horace Wong SC referred to the following three types of association as set out by the ECJ in the *Sabel* case. There is no dispute that only the first two types of association give rise the likelihood of confusion contemplated under section 12(3) :-

- (a) where the public confuses the sign and the mark in question (likelihood of direct confusion);
- (b) where the public makes a connection between the proprietors of the sign and those of the mark and confuses them (likelihood of indirect confusion and association); and
- (c) where the public considers the sign to be similar to the mark and perception of

the sigh calls to mind the memory of the mark, although the two are not confused (likelihood of association in the strict sense).²⁸

80. At the hearing, Mr. Wong referred me to the judgment of Arnold J. in the UK case of *Aveda Corp. v. Dabur India Ltd* [2013] E.T.M.R. 33 and contended that the word “TIFFANNY” has independent significance in the suit mark. The judgment confirmed the principle that the assessment of likelihood of confusion had to be made by considering and comparing each of the signs as a whole. There are situations, however, in which the average consumer, while perceiving a composite sign as a whole, will recognize that a mark consists of two signs one or both of which has a significance which is independent of the significance of the composite whole. Under such circumstances, the public can be misled into believing that there is a kind of connection between the respective undertakings if one of them uses and incorporates the earlier mark of the other undertaking in a composite mark.

81. In the *Aveda* case, Arnold J. found that the average consumer who was familiar with AVEDA beauty products would likely be confused by the use of “DABUR UVEDA” in relation to identical goods, and a strong likelihood existed that the average consumer would think that that sign indicated some connection between “DABUR” and “AVEDA” (following a finding that “UVEDA” was visually and aurally very close to “AVEDA”). In the judgment, Arnold J. referred to, *inter alia*, the guidance given by the ECJ in *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* (C120/04) [2005] E.C.R. I-8551 and the following paragraphs :-

“29 In the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see Matratzen Concord, paragraph 32).

30 However, beyond the usual case where the average consumer perceives a mark as a whole, and notwithstanding that the overall impression may be

²⁸ Paragraphs 80 and 81 of judgment.

dominated by one or more components of a composite mark, it is quite possible that in a particular case an earlier mark used by a third party in a composite sign including the name of the company of the third party still has an independent distinctive role in the composite sign, without necessarily constituting the dominant element.

31 In such a case the overall impression produced by the composite sign may lead the public to believe that the goods or services at issue derive, at the very least, from companies which are linked economically, in which case the likelihood of confusion must be held to be established.

32 The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.

...

36 It must therefore be accepted that, in order to establish the likelihood of confusion, it suffices that, because the earlier mark still has an independent distinctive role, the origin of the goods or services covered by the composite sign is attributed by the public also to the owner of that mark.

37 ... where the goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein.”

82. The marks in question in the cases of *Medion* and *Aveda* consisted of two words (“THOMSON LIFE” in *Medion* and “DABUR UVEDA” in *Aveda*), and the common or similar component “LIFE” and “UVEDA” did not have a dominant role in the marks concerned. In the present case, the suit mark is a composite mark constituted by a device and word elements in English and Chinese. Both the word “TIFFANNY” and the characters “姚欣” are dominant and distinctive. Besides, the identity or similarity of the goods considered in the two cases had contributed to the finding that there was likelihood of confusion, whilst there is neither identity nor similarity between the applied for goods and the

Opponent's registered goods and services discussed above. In my view, the *Aveda* case does not assist the Opponent's argument.

83. Mr. Wong also referred me to the decisions of the Hong Kong Trade Marks Registry on *ARTIBO* 星輝百痛敵 trade mark (13 March 2011) and *BOCHING Simple Me* trade mark (12 October 2012). In the *ARTIBO* 星輝百痛敵 case, the hearing officer found that the common element “百痛敵” placed in the middle of the applied for mark had an independent distinctive role in the mark which contributed to a certain degree of similarity between that mark and the prior mark of the opponent. Misrepresentation was found to exist because the opponent had acquired goodwill or reputation in the market and the fields of activity of the applicant and the opponent overlapped. The opposition under section 12(5)(a) of the Ordinance succeeded. In the *BOCHING Simple Me* case, the hearing officer found that the opponent's “simple” word mark had acquired distinctive character through use to a significant degree, and the word “simple” was the dominant component of the mark in question. The goods sought to be registered were either identical or similar to the goods of the opponent. The opposition under section 12(3) of the Ordinance succeeded as likelihood of confusion was found to exist.

84. In the *ARTIBO* 星輝百痛敵 case, the characters “百痛敵” had distinctive significance in the applied for mark. In the *BOCHING Simple Me* case, the word “simple” was the dominant component of the mark in issue. These components contributed to the finding of passing off and the existence of likelihood of confusion in the respective cases. On the contrary, the only similarity between the suit mark and the “TIFFANY” mark lies in the word “TIFFANNY”, whilst the characters “姚欣” which bear no resemblance or connection with the “TIFFANY” mark are also dominant and distinctive. Besides, the fields of activity of the parties in the *ARTIBO* 星輝百痛敵 case overlapped, and the goods considered in the *BOCHING Simple Me* case were either identical or similar. That is not so in the present case. I do not consider the two cases assist the Opponent's argument.

85. I should also deal with Mr. Wong's argument that the characters “姚欣店” are meaningless to the members of the public who do not know Chinese. Hong Kong is a bi-lingual city where English and Chinese are commonly used by the majority of the population. The average consumer, who is reasonably well informed and reasonably observant and circumspect, would perceive both components of “TIFFANNY” and “姚欣” in the suit mark. For members of the public who do not know Chinese, they would be able to

perceive that the overall impression given by the suit mark is different from that of the Opponent's "TIFFANY" word mark.

86. I have found that the suit mark and the "TIFFANY" mark are similar to a moderate degree, but there is no identity or similarity between the applied for goods and the registered goods and services of the Opponent discussed above. Considering the matter globally and even taking into account the enhanced distinctiveness of the "TIFFANY" mark in respect of jewellery in Hong Kong, I am not satisfied that the use of the suit mark on the applied for goods would give rise to any likelihood of confusion within the meaning of paragraph 79 (a) and (b) above.

87. The Opponent's opposition under section 12(3) is not made out.

88. The Applicant pleaded, *inter alia*, that the suit mark had been continuously used by Tiffany Flowers shop since it commenced business in Hong Kong in 1994,²⁹ that it shall be reasonable, lawful and legitimate for the Applicant to apply the suit mark on the applied for goods by running the florist shop or alternatively "*to use the Opposed Mark currently (sic.) with the Opponent's Marks or to allow it to be used and registered in relation to the Opposed Goods.*"³⁰ Mr. Wong in his arguments also dealt with the issue of honest concurrent use under section 13(1) of the Ordinance and contended that, since the mark(s) used by the Applicant was/were different from the suit mark and there was no evidence of use of the suit mark, the Applicant should not be entitled to invoke a case of honest concurrent use. As I have concluded that section 12(3) is not made out, I do not see the need to address the issue of honest concurrent use.

Opposition under section 12(4) of the Ordinance

89. Section 12(4) of the Ordinance reads :

"... 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

²⁹ Paragraph 7(d), Amended counter-statement.

³⁰ Paragraph 8(c), Amended counter-statement.

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.”

90. To succeed under section 12(4), the Opponent has to establish the following :

- (a) that the suit mark is identical or similar to the “TIFFANY” mark;
- (b) that the “TIFFANY” mark is entitled to protection under the Paris Convention as well-known trade mark³¹; and
- (c) the use of the suit mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the “TIFFANY” mark.

91. I find the following passages from the judgment of the ECJ in *Intel Corporation Inc v CPM United Kingdom Ltd.* [2009] R.P.C. 15 useful to an understanding of the basis for opposition under section 12(4) of the Ordinance.³²

“27 The types of injury against which Art.4(4)(a) of the Directive ensures such protection for the benefit of trade marks with a reputation are, first, detriment to the distinctive character of the earlier mark, secondly, detriment to the repute of that mark and, thirdly, unfair advantage taken of the distinctive character or the repute of that mark.

28 Just one of those three types of injury suffices for that provision to apply.

29 As regards, in particular, detriment to the distinctive character of the earlier mark, also referred to as ‘dilution’, ‘whittling away’ or ‘blurring’, such

³¹ According to section 4(1) of the Ordinance, references in the Ordinance to a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark shall be construed as references to a trade mark which is well-known in Hong Kong. In determining whether a trade mark is well-known in Hong Kong, the Registrar shall have regard to Schedule 2 to the Ordinance (section 4(2) of the Ordinance).

³² The judgment deals with the interpretation of Article 4(4)(a) of the European Council Directive 89/104 (corresponding to section 5(3) of the UK Trade Marks Act 1994 which is equivalent to section 12(4) of the Ordinance).

detriment is caused when that mark's ability to identify the goods or services for which it is registered and used as coming from the proprietor of that mark is weakened, since use of the later mark leads to dispersion of the identity and hold upon the public mind of the earlier mark. That is notably the case when the earlier mark, which used to arouse immediate association with the goods and services for which it is registered, is no longer capable of doing so.

30 *The types of injury referred to in Art.4(4)(a) of the Directive, where they occur, are the consequence of a certain degree of similarity between the earlier and later marks, by virtue of which the relevant section of the public makes a connection between those two marks, that is to say, establishes a link between them even though it does not confuse them...*

31 *In the absence of such a link in the mind of the public, the use of the later mark is not likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.*

32 *However, the existence of such a link is not sufficient, in itself, to establish that there is one of the types of injury referred to in Art.4(4)(a) of the Directive...(emphasis added)*

...

41 *The existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case*

42 *Those factors include:*

- the degree of similarity between the conflicting marks;*
- the nature of the goods or services for which the conflicting marks were registered,³³ including 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;*

³³ References are made to goods or services "registered" as the *Intel* decision dealt with an application for declaration of invalidity of a registered mark.

– *the existence of the likelihood of confusion on the part of the public.*³⁴”

92. Mr. Wong contended that the “TIFFANY” mark is similar to the suit mark and there is clearly a link between the two marks. Taking into account the reputation of the “TIFFANY” mark, the use of the suit mark by the Applicant will likely take unfair advantage of and be detrimental to the distinctive character or repute of the “TIFFANY” mark, and the Applicant has failed to show that the use of the suit mark is with “due course”.

93. I will first consider whether a “link” exists in the mind of the public when they confront with the suit mark. I have found above that the suit mark is moderately similar to the “TIFFANY” mark. The similarity lies in the word “TIFFANNY” in the suit mark. In view of the history of use and promotion of the “TIFFANY” mark in Hong Kong outlined above, I am satisfied that the “TIFFANY” mark has reputation in respect of jewellery in Hong Kong.

94. Having considered the specification of goods of the Opponent and the applied for goods, I find that the relevant sections of the public targeted by the Opponent and the Applicant respectively are both general members of the public. As stated above, Hong Kong is a bi-lingual city, and members of the public would perceive the distinctive components of “TIFFANNY” and “姚欣” in the suit mark. It is clear that the word “姚欣” bears no connection with the “TIFFANY” mark.

95. I have discussed the dissimilarities between the applied for goods and the Opponent’s registered goods and services. In this respect, I note the following guidance at paragraphs 49 and 50 of the *Intel* case:

“49. Furthermore, even if the relevant section of the public as regards the goods or services for which the conflicting marks are registered is the same or overlaps to some extent, those goods or services may be so dissimilar that the later mark is unlikely to bring the earlier mark to the mind of the relevant public.

50. Accordingly, the nature of the goods or services for which the conflicting

³⁴ The ECJ gave further guidance in relation to these factors at paragraphs 43 to 58 of the *Intel* case.

marks are registered must be taken into consideration for the purposes of assessing whether there is a link between those marks.”

96. I have also concluded above that the use of the suit mark on the applied for goods would not give rise to any likelihood of confusion.

97. Considering the matter globally, I am not persuaded that the circumstances including the reputation of the “TIFFANY” mark and the moderate similarity between the marks would be sufficient to give rise to a “link” in the mind of the public. The fact that the earlier mark has a huge reputation for certain specific types of goods or services does not necessarily imply that there is such a link.³⁵ In view of the absence of a link in the mind of the public, it is not necessary to go on to examine the other requirements for establishing the opposition under section 12(4) of the Ordinance. As stated in the *Intel* case, even if a link is found to exist, such link is not sufficient, in itself, to establish any of the three types of injury under section 12(4).³⁶ Further, detriment to and unfair advantage of distinctive character or repute must be provable 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).

98. The Opponent’s opposition under section 12(4) fails.

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

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

“... 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

³⁵ Paragraph 64 of the *Intel* case.

³⁶ Paragraph 37 of the *Intel* case reads “*In order to benefit from the protection ..., 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’.*” Paragraph 68 further states “*...like the existence of a link between the conflicting marks, the existence of one of the types of injury ..., or a serious likelihood that such an injury will occur in the future, must be assessed globally, taking into account all factors relevant to the circumstances of the case, which include the criteria listed in para.42 of this judgment.*”

sign used in the course of trade or business (in particular, by virtue of the law of passing off) ...”

100. I refer to the following passage from the judgment of the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] R.P.C. 341, which has been adopted by the Hong Kong Court of Final Appeal in the case of *Ping An Securities Limited v 中國平安保險(集團)股份有限公司* (2009) 12 HKCFAR 808 –

*“The law of passing off can be summarised in one short general proposition, no man may pass off his goods as those of another. More specifically, it may be expressed in terms of the elements which the plaintiff in such an action has to prove in order to succeed. These are three in number. **First**, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying ‘get-up’ (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff’s goods or services. **Second**, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by him are the goods or services of the plaintiff. Whether the public is aware of the plaintiff’s identity as the manufacturer or supplier of the goods or services is immaterial, as long as they are identified with a particular source which is in fact the plaintiff. For example, if the public is accustomed to rely on a particular brand name in purchasing goods of a particular description, it matters not at all that there is little or no public awareness of the identity of the proprietor of the brand name. **Third**, he must demonstrate that he suffers or, in a *quia timet* action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant’s misrepresentation that the source of the defendant’s goods or services is the same as the source of those offered by the plaintiff.”* (emphasis added)

101. The relevant date for considering the ground of opposition on passing off is the date of the subject application or the date of the commencement of the conduct complained of, if the Applicant has used the mark before the date of the subject application. As the suit

mark has not been used in Hong Kong before the date of the subject application³⁷, the relevant date for considering this ground of opposition is 13 April 2010.

102. Mr. Wong contended that the use of the suit mark in relation to natural plants and flowers will likely cause deception amongst members of the public, leading them to believe that the products of the Applicant are the products of, or products associated with or authorised by the Opponent. He referred to the Applicant's position that "flowers for wedding" is a major business, as shown in the services rendered in flower arrangements, decorations for celebratory occasions, bridal bouquets, table centerpieces etc.. He submitted that such business interests are in close association with the Opponent's wedding and celebratory-related business, in which the Opponent has strong reputation. The Opponent has offered its range of related goods and services such as engagement rings and wedding jewellery, along with the operation of its "wedding and gift registry" and "bridal registry". Besides, deception is likely as it is natural and not uncommon for fashion brands to extend their business to floral business.

103. Ms. Leung for the Applicant submitted that, upon examination of the Opponent's evidence on the wedding and celebratory-related business at Exhibits NR-40 and NR-41, the Opponent only offered jewellery items in relation to weddings and/or celebrations, but not florist services or products. There is no common field of activity.

104. The Opponent enjoys goodwill and reputation in jewellery marketed under the "TIFFANY" mark in Hong Kong. Jewellery covers a wide range of items and include engagement rings for weddings. In relation to the Opponent's "wedding and gift registry" (printout from website at Exhibit NR-40), the service appears to target customers globally but there is no evidence on the extent of use of such services by members of the public in Hong Kong, or the revenue derived from operating such services in Hong Kong. I do not find that the Opponent's evidence is sufficient to substantiate the claim that the Opponent enjoys reputation in wedding and celebratory-related business generally.

105. There is no suggestion that the Opponent has ever sold or licensed the sale of any natural plants and flowers in Hong Kong or enjoys any goodwill or reputation in offering natural plants and flowers or florist services under the "TIFFANY" mark.

³⁷ The evidence does not show instances of use of the suit mark before the date of the subject application. Further discussion is set out in paragraph 129 of the decision.

106. The Opponent bears the burden to demonstrate that the use of the suit mark on natural plants and flowers amounts to a misrepresentation to the public leading or likely to lead the public to believe that the goods offered by the Applicant are those of or licensed by the Opponent.

107. The similarity between the suit mark and the “TIFFANY” mark lies in the word “TIFFANNY” in the suit mark. However, the term “姚欣店” in Chinese which bears no connection with the “TIFFANY” mark would also catch the attention of members of the public. The term “姚欣店” plays a role in distinguishing the suit mark from the “TIFFANY” mark.

108. The Applicant has filed voluminous evidence seeking to demonstrate the wide exposure of Ms. Yiu, Tiffany Flowers and their products and/or service to public attention since the mid-1990s via various articles and publications including newspapers of wide circulation in Hong Kong.³⁸ In many of the articles and advertisements, Ms. Yiu was identified as “TIFFANNY”, “TIFFANNY YIU” and/or “姚欣”, the proprietor or florist of Tiffany Flowers.³⁹ I can also find evidence of appreciation by customers of the products and/or flower arrangements rendered by Tiffany Flowers and/or Ms. Yiu personally, including those offered to local celebrities or in connection with weddings.⁴⁰

109. Considering the history of operation of Tiffany Flowers since the mid-1990s and the services rendered by Ms. Yiu personally, together with the substantial promotional efforts over the years, I conclude that both Tiffany Flowers and Ms. Yiu have acquired goodwill and reputation in Hong Kong in relation to flower arrangements and products made of natural flowers and plants such as flower bouquets.

110. The Opponent has filed evidence seeking to demonstrate that some members of

³⁸ A copy of an article in Ming Pao dated 5 June 1994 can be found at page 984 of the exhibits to Yiu’s affidavit, introducing the florist shop and Ms. Yiu with the name “Tiffany” and “姚欣”. A copy of another article in Apple Daily dated 12 February 1997 can be found at pages 1047 and 1048, though the names of the florist shop and Ms. Yiu were mis-spelt as “Tiffany”.

³⁹ There were articles in Chinese in, for instance, the Eastweek Magazine (7 November 2001, page 1263 of the exhibits to Yiu’s affidavit), The Sun (21 January 2002, pages 1232 to 1233), Sing Tao Daily (20 March 2005, pages 1283 to 1286), Sing Pao (25 September 2005, pages 1297 to 1300) and Oriental Daily (3 May 2007, pages 1290 to 1291). There were articles in English in, for instance, Hong Kong Tatler (June 2000, pages 803 to 804), HK Magazine (11 February 2005, page 789) and Home Journal (May 2006).

⁴⁰ Such as compliments in relation to Ms. Yiu’s services at celebrity weddings (Hong Kong Tatler, June 2000, page 804 of the exhibits to Yiu’s affidavit) and thank you cards or compliment notes at Exhibit YYT-13.

the public may come under the impression that the products offered by the Applicant such as flower bouquets were of high class as they would compare them with products offered by other high-end florist shops such as agnès b Fleuriste.⁴¹ The point was also made that the use of the word “TIFFANY” or “TIFFANNY” in relation to the applied for goods or the florist business could very likely lead to a wrongful association by the general public between Tiffany Flowers and the Opponent.⁴²

111. Upon considering the evidence carefully, I do not think that such evidence substantiates the argument that members of the public had been or would be misled into thinking that they were buying from the florist shop operated by the Opponent, or that the florist shop and the products offered were associated with the Opponent. I refer to the online discussions posted by some customers of Tiffany Flowers at Exhibit YYT-14 to Yiu’s affidavit. Exhibit NR-34 to Rasheed’s statutory declaration also contains some negative comments against the products and services of Tiffany Flowers.⁴³ I note from both exhibits some discussions where the customers referred to personal contacts with a lady named “Tiffany”, or the female “owner” of the shop. Some customers in the discussions at Exhibit NR-34 knew that they were buying from Tiffany Flowers with “Tiffany” as the florist or the owner.

112. The Opponent specifically referred to the Applicant’s claim that “flowers for wedding” is the major business of Tiffany Flowers, and that flower arrangements and bouquets can often be found at weddings. The customers who participated in the online discussions at Exhibit YYT-14 and Exhibit NR-34 were indeed looking for products made of natural flowers such as flower bouquets for use at wedding ceremonies. But even so, it is noteworthy that they did not draw any connection between Tiffany Flowers and “Tiffany & Co.”. Even though some customers mistakenly referred to “Tiffany Flowers” and “Tiffany” in the online discussions, they were not misled or confused into thinking that Tiffany Flowers or the florist shop they talked about was related to, or was an extension of the Opponent’s jewellery business.

113. As to the comparison of Tiffany Flowers with some high-end florist shops in some publications or by some members of the public, it appears to me that such comparison

⁴¹ Paragraph 46 above.

⁴² Paragraph 9, Loo’s statutory declaration.

⁴³ The exhibit contains printouts from comtools.esdlife.com/wedding_forum (altogether 11 pages) showing 4 sets of forum discussions among users in 2004, 2006 and 2007 respectively.

could arise as a result of the recognition of the quality of the products and/or services rendered by Tiffany Flowers which are comparable with other florist shops. Such evidence does not substantiate the Opponent's assertion that those publications or members of the public who made the comparison were misled or confused into thinking that Tiffany Flowers was operated by, related to or associated with the Opponent.

114. Mr. Wong contended that it is natural and not uncommon for fashion brands to extend their business to floral business, and referred to the decision of the Hong Kong Trade Marks Registry in *METEORITE trade mark* (28 November 2012). In that case, the opponent opposed the registration of the mark in question for bags, clothing, footwear items and related services. The opponent relied on its reputation acquired by its mark "MÉTÉORITES" on cosmetics and succeeded in the opposition under section 12(5)(a) of the Ordinance. The hearing officer found that as at the relevant date, the opponent had built up a reasonable degree of reputation in the "MÉTÉORITES" mark in relation to cosmetic products. She found that, although the applicant and the opponent were not in a common field of activity, when members of the public who were aware of the reputation of the "MÉTÉORITES" mark in relation to cosmetic products came across the applied for goods and services of the applicant bearing the "METEORITE" mark, they would likely be deceived or confused into thinking that such goods and services were those of the opponent or somehow connected with the opponent's business in some way as an extension of its business or otherwise.

115. In my view, the *METEORITE* case does not assist the Opponent's case. The hearing officer in that case placed emphasis on the considerations that the two word marks concerned were virtually identical, and there could be in the minds of the public some kind of association or connection between the respective fields of activity of the applicant and the opponent, in view of the opponent's evidence that some famous brands engaged in both cosmetics and fashion businesses. In the present case, the suit mark and the "TIFFANY" mark is only moderately similar. As to the Opponent's evidence that some fashion brands extend their business to floral business, I do not consider that such evidence supports a case that members of the public would consider some kind of association or connection between jewellery business and florist business.

116. On the issue of the relevance of a common field of activity, I would like to refer to the judgment of the UK Court of Appeal in *Harrods Ltd v Harroddian School Ltd* [1996] R.P.C. 697. Millet L.J. said the following at page 714 :

“There is no requirement that the defendant should be carrying on a business which competes with that of the plaintiff or which would compete with any natural extension of the plaintiff’s business. ... What the plaintiff in an action for passing off must prove is not the existence of a common field of activity but likely confusion among the common customers of the parties.

The absence of a common field of activity, therefore, is not fatal; but it is not irrelevant either. In deciding whether there is a likelihood of confusion, it is an important and highly relevant consideration

“...whether there is any kind of association, or could be in the minds of the public any kind of association, between the field of activities of the plaintiff and the field of activities of the defendant”

...

*Where there is no or only a tenuous degree of overlap between the parties’ respective fields of activity the burden of proving the likelihood of confusion and resulting damage is a heavy one. In *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that*

“even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to show that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.”

In the same case Stephenson L.J. said at page 547:

*“... When the alleged “passer off” seeks and gets no benefit from using another trader’s name and trades in a field far removed from competing with him, there must, in my judgment, be clear and cogent proof of actual or possible confusion or connection, and of actual damage or real likelihood of damage to the respondents’ property in their goodwill, which must, as Lord Fraser said in the *Advocaat* case, be substantial.”*

117. In the present case, the fields of activity and the nature of the business of the Opponent and the Applicant are very far apart, namely the Opponent is engaged in selling jewellery and other luxury goods, whilst the Applicant is engaged in offering natural flowers and plants and related services. Taking into account the passages cited in the *Harrods* case above, where the fields of activity are far apart, a plaintiff has to adduce clear and cogent proof of actual or possible confusion or connection. In this respect, I have discussed the evidence from the Opponent seeking to show confusion or connection, and I have concluded that members of the public did not draw any connection between Tiffany Flowers and the Opponent, and they were not misled or confused into thinking that Tiffany Flowers was related to, or was an extension of the Opponent's jewellery business.

118. As misrepresentation is not made out, there is no question of any damage resulting from a misrepresentation.

119. The elements for establishing a case under section 12(5)(a) are not proved. The Opponent's opposition under section 12(5)(a) fails.

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

120. 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.”

121. There is no definition of the term “bad faith” in the Ordinance. In *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] R.P.C. 367, Lindsey 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.”

122. In *Harrison v Teton Valley Trading Co (CHINAWHITE)* [2005] F.S.R. 10, the UK 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.”

123. In determining whether an application was made in bad faith, the courts have applied a test which involves both subjective and objective elements. In the case of *Ajit Weekly Trade Mark* [2006] R.P.C. 25, the Appointed Person formulated the test (at paragraph 44 of the decision) 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.”

124. It should be noted that an allegation of bad faith is a serious allegation which must be distinctly alleged. 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 paragraph 31). Cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith (*Brutt Trade Marks* [2007] R.P.C. 19 at

paragraph 29).

125. The onus is on the Opponent to prove that the subject application was made in bad faith. The test for bad faith comprises both subjective and objective elements. The Opponent's allegation of bad faith on the part of the Applicant must be supported by evidence of dishonest activities or dealings or at the least commercial behaviour or activities that fall below the standard regarded as acceptable by honest people of proper standards.

126. Given the Opponent's reputation in relation to jewellery in Hong Kong, I am prepared to find that the Applicant has knowledge of the "TIFFANY" mark. There is no suggestion that the Applicant does not know of the Opponent or the reputation of the "TIFFANY" mark.

127. The Opponent's case under section 11(5)(b) is that "*the Applicant, in applying for registration of the Opposed Mark, and in adopting in actual use the mark "TIFFANY FLOWERS" on its own, is seeking to take advantage of the Opponent's reputation and goodwill in and to the marks of "TIFFANY" and "TIFFANY & CO." trade marks, and as such should be considered unlawful and commercially dishonest, and that the Applicant cannot claim to have an honest intention to use the Opposed Mark or to allow it to be used in relation to the Goods. The application to register the Opposed Mark was therefore made in bad faith...*".⁴⁴ Mr. Wong submitted that the Applicant does not have an honest intention to use the suit mark in relation to natural plants and flowers.

128. The Applicant has filed voluminous evidence which show the marks used in promotion of the products made of natural flower or flower arrangements rendered by Tiffany Flowers, the reputation enjoyed by Tiffany Flowers and Ms. Yiu as a florist, and the recognition of the high quality of the goods and services concerned since the mid-1990s.

129. Mr. Wong contended that the Applicant's evidence did not show use of the suit mark at all but only showed the use of the name "TIFFANY FLOWERS" and a different device. He further contended that the Applicant himself had not made any statement to explain how he intended to use the suit mark in relation to natural plants and flowers, and referred to Ms. Yiu's evidence that they "*sell ordinary plant or containers for flowers or*

⁴⁴ Paragraph 15(d), Grounds of Opposition.

flower arrangements with no brand at all.⁴⁵

130. Upon consideration of the Applicant's evidence, I note instances of use of "TIFFANNY FLOWERS", "姚欣店" and the device of 4 squares (among which one square is peach in colour and another one green) on numerous occasions. It is true that the evidence does not show use of a mark bearing the design of the suit mark. However, I do not agree that a finding of bad faith, which is itself a serious allegation, can just be inferred from this fact, especially when there is substantial evidence before me showing that "TIFFANNY FLOWERS" and/or "姚欣店" (containing the distinctive element(s) of "TIFFANNY" and "姚欣" of the suit mark) have been used in relation to the products or services of Tiffany Flowers before the date of the subject application. There are photographs in the exhibits showing use of the words "TIFFANNY FLOWERS" on ribbons tied to flower bouquets⁴⁶, and there are references to "TIFFANNY FLOWERS" and/or "姚欣店" in articles, printed advertisements, acknowledgements of sponsorship as well as directories in magazines.⁴⁷ There are instances of the words "TIFFANNY FLOWERS" superimposing on a device constituted by two squares or rectangles in the form of ⁴⁸ or the 4-square device (which is identical or similar to the background design of the suit mark) used as backdrop, cardboards or labels.⁴⁹

131. There is no requirement that an applicant must have used an applied for mark before the date of application for registration. I notice that the suit mark is a combination of the different marks or elements which were used in the Tiffany Flowers business before the date of the subject application. Thus, I am not convinced that the Applicant has no honest intention to use the suit mark, or that bad faith could be inferred from the absence of explanation from the Applicant as to the intended use to be made of the suit mark.

132. As regards the allegation that the Applicant is seeking to take advantage of the Opponent's reputation and goodwill in and to the "TIFFANNY" mark, I have found above that

⁴⁵ Paragraph 15, Yiu's affidavit.

⁴⁶ For instance, pages 1137, 1146, 1170 and 1179 of the exhibits to Yiu's affidavit.

⁴⁷ The term "姚欣店" appears in, for instance, pages 914, 918, 945 of the exhibits to Yiu's affidavit.

⁴⁸ Copies of advertisements at, for instance, pages 702, 917, 918 and 992 of the exhibits to Yiu's affidavit. There are copies of photographs showing a signboard with the design of two rectangles with the words "TIFFANNY FLOWERS" (for instance, pages 999 and 1009 of the exhibits to Yiu's affidavit). Exhibit NR-33 contains a photograph showing a rectangular signboard with the words "TIFFANNY FLOWERS" and a different colour scheme.

⁴⁹ For instance, pages 17 and 862 to 870 of the exhibits to Yiu's affidavit.

there is no likelihood of confusion. The Opponent also pointed to the references to “Tiffany” (i.e. with one “n” instead of two) Flowers in some publications or online discussions, and contended that the Applicant has not acted to correct the misunderstanding. I refer to the discussion above that there is no evidence showing that members of the public have been or would be misled into believing that the Applicant’s goods are those of or associated with the Opponent. On the contrary, the Applicant’s evidence shows that members of the public have all along been informed that “Tiffanny” is the name of Ms. Yiu, the florist, and Ms. Yiu is the proprietor of or renders her service on behalf of Tiffany Flowers, which bears her name.⁵⁰ Most of the materials produced in the Applicant’s evidence also show the correct spelling of the word “Tiffanny”.

133. To conclude, I am not convinced that the subject application was made in bad faith. The Opponent’s opposition under section 11(5)(b) fails.

Costs

134. The Opponent has failed in the opposition. There is nothing in the circumstances or conduct of this case which would warrant a departure from the general rule that the successful party is entitled to its costs. I accordingly order that the Opponent pays the costs of these proceedings.

135. 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.

(Miss Joyce Poon)
for Registrar of Trade Marks
8 September 2014

⁵⁰ Copies of numerous articles and interview reports published in newspapers and magazines are produced, e.g. pages 984 to 990, 996 to 997, 1000, 1025, 1031 to 1034.

Trade mark and trade mark no.	Date of registration	Specification
<p>TIFFANY (no. 1989B1691AA)</p>	<p>3 November 1987</p>	<p><u>Class 8</u> cutlery, forks and spoons; serving pieces; scissors, razors, knives and pocket knives; manicure sets and implements; garden tools.</p> <p><u>Class 14</u> jewellery fashioned of precious metals and/or precious or semi-precious stones, natural or cultured pearls; precious and semi-precious stones, natural and cultured pearls; watches and clocks; decorative objects fashioned of or plated with precious metals; trophies, cups and commemorative plaques fashioned of or with precious metals; cuff links and studs made of or with precious metals with or without precious or semi-precious stones; cigarette and cigar boxes, cigar and cigarette cases, pill boxes, boxes, ashtrays, liquor flasks, table bells, card holders, banks, keys, key rings, key chains, money clips, book marks, and shoe horns, all of or made with precious metals; perfume flasks, lipstick tubes and brushes, compacts and vanities, hair ornaments, purses, belts and belt buckles, all of or made with precious metals; tableware, trays, waiters, sugar/cream services, coffee/tea services, salt/pepper sets, boxes/centerpieces, vases, serving pieces, condiments, compotiers, napkin rings, mugs, tankards, porringers, loving cups, punch cups, goblets, candelabra and candlesticks, all of or made with precious metals; collar pins, collar stays, tie bars, tie tacks and toothpicks, pin trays, all of or made with precious metals; bar tools, jiggers, tumblers, and corkscrews all of or made with precious metals.</p>

Trade mark and trade mark no.	Date of registration	Specification
		<p><u>Class 21</u> glassware and crystal, articles made of glass and crystal; porcelain, pottery, chinaware and earthenware, and articles made of such materials; household or kitchen utensils and containers (not of precious metal or coated therewith); combs, brushes.</p>
<p>TIFFANY (no. 199302992)</p>	<p>2 March 1992</p>	<p><u>Class 35</u> marketing and promotion of jewellery, watches and clocks, stationery, chinaware, crystal and glassware, decorative accessories made of or in part of precious metals or porcelain or enamel or lacquered wood for the home, silver hollowware, coffee services, bowls, trays, boxes, buckets and baskets, picture frames, mirrors, toiletries silver flatware, lamps, candle holders, playing cards, games, golfing accessories, bar accessories, desk accessories, leather goods, perfumery and cosmetics, clothing accessories, scarves and men's ties; all included in Class 35.</p>
<p>TIFFANY (no. 199700683)</p>	<p>2 March 1992</p>	<p><u>Class 42</u> retail store services relating to jewellery, watches, clocks, stationery, chinaware, crystal ware, glassware, decorative accessories for the home made of or in part of precious metals or porcelain or enamel or lacquered wood, silver hollowware, picture frames, mirrors, toiletries, perfumery and cosmetics, silver flatware, lamps, candle holders, playing cards, games, golfing accessories, utensils and containers for preparing and serving beverages, flasks, bottle openers, corkscrews, cocktail shakers, servers, tumblers, wine tasting cups, jiggers, decanter labels, bottle stoppers, pourers; clothing, scarves and ties, stationery, letter openers, paperweights, pencil cups, note holders, stamp boxes, writing instruments, leather goods; all included in Class 42.</p>