

Cour fédérale



Federal Court

**Date : 20190822**

**Dossier : T-468-15**

**Référence : 2019 CF 1082**

[TRADUCTION FRANÇAISE CERTIFIÉE, NON RÉVISÉE]

**Ottawa (Ontario), le 22 août 2019**

**En présence de madame la juge St-Louis**

**ENTRE :**

**INDUSTRIA DE DISENO TEXTIL, S.A.**

**demanderesse**

**et**

**ZARA NATURAL STONES INC.**

**défenderesse**

**JUGEMENT ET MOTIFS**

[1] Industria de Diseno Textil, S.A. (Industria) interjette appel de la décision rendue le 19 janvier 2015 par la Commission des oppositions des marques de commerce (la Commission), au nom du registraire des marques de commerce, dans laquelle elle rejetait son opposition à l'encontre de la demande d'enregistrement de marque de commerce présentée par Zara Natural Stones Inc. (Natural Stones).

[2] Pour les motifs qui suivent, l'appel sera accueilli, et l'affaire sera renvoyée à la Commission pour nouvelle décision.

I. LE CONTEXTE ET LA DÉCISION CONTESTÉE

[1] Le 2 mai 2011, Natural Stones a présenté la demande d'enregistrement n° 1525938 pour la marque de commerce « ZARA NATURAL STONES & Dessin » (le dessin-marque) fondée sur un emploi projeté au Canada en liaison avec les marchandises suivantes (les marchandises) :

[TRADUCTION]

Blocs de pavage, nommément blocs de pavage pour pavés calibrés, ensembles de blocs de pavage circulaires, blocs de pavage en pierre des champs, ensembles de blocs de pavage octogonaux, blocs sous forme de dalles pour pavés et jardins, blocs de pavage à surface brossée, blocs de pavage à surface sablée, blocs de pavage en pierre plate pour mosaïque ou blocs de pavage irréguliers, blocs de pavage en pierre plate taillés en carré, blocs de pavage polis.

Pierres de pavage, nommément pierres de pavage pour pavés calibrés, ensembles de pierres de pavage circulaires, pierres de pavage en pierre des champs, ensembles de pierres de pavage octogonales, pierres sous forme de dalles pour pavés et jardins, pierres de pavage à surface brossée, pierres de pavage à surface sablée, pierres de pavage en pierre plate pour mosaïque ou pierres de pavage irrégulières, pierres de pavage en pierre plate taillées en carré, pierres de pavage polis.

Carreaux de pavage, nommément carreaux de pavage pour pavés calibrés, ensembles de carreaux de pavage circulaires, carreaux de pavage en pierre des champs, ensembles de carreaux de pavage octogonaux, carreaux sous forme de dalles pour pavés et jardins, carreaux de pavage à surface brossée, carreaux de pavage à surface sablée, carreaux de pavage en pierre plate pour mosaïque ou carreaux de pavage irréguliers, carreaux de pavage en pierre plate taillés en carré, carreaux de pavage polis.

Pierres, nommément pierres de couronnement à bords arrondis, pierres pour margelles, pierres pour bordures, pierres de couronnement taillées à la main, pierres pour bordures de trottoirs, pierres naturelles à bords arrondis à la main pour dessus de

colonne, pierres pour murets et ouvrages de maçonnerie pour aires piétonnières, parcs et jardins, pierres de couronnement pour contours de piscine, pierres ciselées à la main pour dessus de colonne, pierres à bords moulurés pour dessus de colonne, pierres lisses pour dessus de colonne, pierres pour pas japonais, pierres sphériques lisses pour dessus de colonne, pierres pour la construction d'assises rocheuses, pierres pour la construction de marches, pierres pour la construction de murets, pierres de couronnement pour murets.

[2] Le dessin-marque est reproduit ci-dessous :



[3] Industria détenait déjà à ce moment un certain nombre de marques de commerce déposées qui comprenaient le mot « ZARA ». En outre, le 17 septembre 2003, elle avait présenté la demande d'enregistrement n° 1191134 pour une autre marque de commerce, ZARA HOME, qui vise des marchandises dont la liste s'étend sur plus de 10 pages, y compris des [TRADUCTION] « revêtements de sol, nommément : lamelles pour plancher, carreaux pour pavés ». La description complète des marchandises visées dans cette demande est jointe aux présentes en annexe.

[4] Le 21 février 2012, Industria a déposé, en vertu de l'article 38 de la *Loi sur les marques de commerce*, LRC 1985, c T-13 [la Loi], une déclaration d'opposition qui a par la suite été modifiée à deux reprises. Comme la Commission l'a décrit dans sa décision, les motifs

d'opposition soulevés par Industria peuvent être regroupés en trois catégories : (1) ceux qui concernent la non-conformité à l'article 30 de la Loi; (2) ceux qui ont trait à l'absence de caractère distinctif de la marque aux termes des articles 2, 48 et 50 de la Loi; (3) ceux qui sont liés à la probabilité que la marque crée de la confusion avec les marques de commerce d'Industria constituées du mot ZARA et avec le nom commercial Zara d'Industria. Les parties ne contestent pas ce regroupement.

[5] Devant la Commission, chacune des parties a produit une preuve et des observations écrites; celles présentées par Industria se limitaient toutefois à trois paragraphes. Le 27 novembre 2014, la Commission a tenu une audience à laquelle les deux parties ont participé.

[6] Le 19 janvier 2015, la Commission a rejeté l'opposition présentée par Industria à l'encontre du dessin-marque.

[7] La Commission a d'abord reconnu que c'était à Natural Stones qu'il incombait de démontrer que sa demande ne contrevenait pas aux dispositions de la Loi, comme il était allégué dans la déclaration d'opposition. La Commission a ensuite reconnu qu'Industria devait pour sa part s'acquitter du fardeau initial de prouver les faits sur lesquelles elle appuyait ses allégations. La Commission a par la suite rejeté sommairement un certain nombre des motifs d'opposition invoqués par Industria, de sorte qu'il ne restait que ceux fondés sur la probabilité de confusion : l'enregistrabilité aux termes de l'alinéa 12(1)d) de la Loi, le droit à l'enregistrement aux termes des alinéas 16(3)a) et b) ainsi que le caractère distinctif aux termes de l'alinéa 2a).

[8] La Commission s'est ensuite penchée sur la probabilité de confusion entre le dessin-marque de Natural Stones (1) et les marques de commerce déposées d'Industria (2) et la marque de commerce ZARA HOME d'Industria, qui n'a pas encore été enregistrée, liées à des [TRADUCTION] « revêtements de sol, nommément : lamelles pour plancher, carreaux pour pavés ». Seule l'analyse de la marque de commerce ZARA HOME par la Commission est pertinente à l'égard du présent appel.

[9] Afin de déterminer s'il y avait une probabilité de confusion, la Commission a énoncé le critère prévu au paragraphe 6(2), a renvoyé aux arrêts de la Cour suprême du Canada *Mattel, Inc c 3894207 Canada Inc*, 2006 CSC 22 [*Mattel*], *Veuve Clicquot Ponsardin c Boutiques Cliquot Ltée*, 2006 CSC 23 [*Veuve Clicquot*], ainsi que *Masterpiece Inc c Alavida Lifestyles Inc*, 2011 CSC 27 [*Masterpiece*], et a analysé les éléments énumérés au paragraphe 6(5).

[10] La Commission s'est exprimée ainsi dans son analyse des facteurs indiqués au paragraphe 6(5) :

- a) le facteur du « caractère distinctif inhérent des marques de commerce ou noms commerciaux, et la mesure dans laquelle ils sont devenus connus » ne joue en faveur d'aucune des parties : il n'y a aucune preuve de la mesure dans laquelle la marque de commerce ZARA HOME d'Industria est devenue connue au Canada;
- b) le facteur de « la période pendant laquelle les marques de commerce [...] ont été en usage » ne favorise aucune des parties : il n'y a aucune preuve de l'usage des marques des parties au Canada;
- c) les facteurs du « genre de produits » et de « la nature du commerce » jouent en faveur d'Industria : il est clair qu'il existe un recoupement entre les « carreaux pour pavés » — des produits visés par la marque de commerce ZARA HOME d'Industria — et

les marchandises; l'affirmation selon laquelle leurs voies de commercialisation sont différentes n'est que pure spéculation;

d) le facteur du « degré de ressemblance » est important et il joue en faveur de Natural Stones : les « marques sont différentes, aussi bien sur les plans visuel et sonore que dans les idées qu'elles suggèrent »; « [le dessin-]marque comporte des caractéristiques visuelles distinctes » et il « est suggesti[f] des Marchandises, tandis que la marque de commerce ZARA HOME [d'Industria] est suggestive de l'environnement dans lequel les marchandises [d'Industria] pourraient être utilisées » (décision de la Commission, au paragraphe 64).

[11] La Commission a donc conclu que le dessin-marque n'était pas susceptible de créer de la confusion avec la marque ZARA HOME d'Industria, qui n'a pas encore été enregistrée, et a rejeté l'opposition soulevée par Industria.

[12] Le 30 mars 2015, Industria a présenté une demande devant la Cour fédérale en vertu de l'article 56 de la Loi, afin d'interjeter appel de la décision rendue par la Commission.

[13] Dans le cadre du présent appel, les parties ont toutes deux produit une preuve supplémentaire. Industria a déposé l'affidavit de M. Alain Bédard, archiviste à l'emploi de l'avocat d'Industria, souscrit le 14 août 2015. Natural Stones a déposé les affidavits de M. Hasnain Ali Khatau, président de Natural Stones, souscrit le 13 septembre 2015, et de M. Brandon Chung, étudiant en droit, souscrit le 13 août 2015. Les deux ont été contre-interrogés par Industria.

## II. L’AFFAIRE EN PARALLÈLE

[14] Il est utile à ce stade de décrire une instance parallèle mettant en cause les mêmes parties. Le 18 juin 2012, Natural Stones a présenté la demande d’enregistrement n° 1582505 d’une marque de commerce formée du mot ZARA (le mot servant de marque), fondée sur l’emploi au Canada et visant les mêmes marchandises que celles couvertes par sa demande d’enregistrement du dessin-marque. Le 21 février 2013, Industria a déposé une déclaration d’opposition à l’encontre de cette demande également.

[15] Dans cette affaire parallèle, la Commission a entre autres conclu que Natural Stones ne s’était pas acquittée de son fardeau de démontrer, selon la prépondérance des probabilités, qu’à la date pertinente, le mot servant de marque n’était pas susceptible de créer de la confusion avec la marque de commerce ZARA HOME d’Industria. La Commission a conclu que les marques se ressemblaient l’une l’autre et qu’il existait clairement un recoupement entre les marchandises de Natural Stones et les produits couverts par la demande d’Industria.

[16] La Commission a donc tiré les mêmes conclusions que celles énumérées au paragraphe 11 ci-dessus, hormis en ce qui concerne le facteur du « degré de ressemblance », pour lequel elle s’est exprimée ainsi :

[72] En définitive, je considère que les marques en cause se ressemblent. La partie dominante de la marque de commerce ZARA HOME est l’élément initial ZARA. Il a été dit que le premier élément d’une marque de commerce est souvent le plus important [voir *Conde Nast Publications Inc c Union des Editions Modernes* (1979), 46 CPR (2d) 183 (CF 1re inst);]. [Le mot servant de marque de Natural Stones] est identique à la première partie de la marque de commerce ZARA HOME [d’Industria], qui

en est aussi la partie dominante. Cet important facteur joue en faveur [d'Industria].

[17] La Commission a donc conclu que le mot servant de marque de Natural Stones ressemblait à la marque de commerce ZARA HOME d'Industria et qu'elle portait sans doute à confusion avec celle-ci.

### III. LES OBSERVATIONS DES PARTIES

#### A. *La thèse d'Industria*

##### (1) La norme de contrôle

[18] Industria soutient que l'appel à l'encontre d'une décision rendue par la Commission est assujéti à la norme du caractère raisonnable ou, si de nouveaux éléments de preuve présentés en appel avaient pu avoir un effet considérable sur la décision de la Commission, à la norme de la décision correcte (*Mattel*, au par. 40; *United Grain Growers Ltd c Michener* (2001), 12 CPR (4th) 89 (CAF), au par. 8).

[19] Industria soutient que la preuve supplémentaire produite par Natural Stones devant la Cour n'aurait pas eu un effet considérable sur les conclusions tirées par la Commission. Elle explique que la preuve supplémentaire n'a d'incidence sur aucune des circonstances énumérées au paragraphe 6(5) de la Loi et qu'elle n'étaye pas les arguments que Natural Stones entend présenter. Industria insiste également sur le fait que ces arguments ne sont pas pertinents pour la question en litige, soit l'appréciation déraisonnable du degré de ressemblance entre les marques faite par la Commission, vu l'appréciation faite dans l'affaire parallèle.



(2) La probabilité de confusion

[20] Industria précise que son appel se limite à l'appréciation qu'a faite la Commission quant au degré de ressemblance entre les marques de commerce, c'est-à-dire l'alinéa 6(5)e de la Loi; elle ne conteste pas l'analyse des autres facteurs indiqués au paragraphe 6(5) de la Loi (mémoire de la demanderesse, au par. 49).

[21] Industria soutient que la décision contestée n'est ni correcte ni raisonnable, puisque la Commission a commis une erreur en n'appliquant pas le même raisonnement que celui qu'elle avait suivi dans l'affaire parallèle en ce qui concerne le degré de ressemblance. Industria conteste le fait que la partie dominante de la marque « ZARA » constituait un facteur important dans la décision parallèle, alors qu'elle avait été complètement écartée dans la décision en l'espèce, et ce, alors même qu'elle est exactement la même.

[22] En se fondant sur l'arrêt *Masterpiece*, Industria soutient que la Commission aurait dû conclure que le mot « ZARA » était l'aspect le plus frappant du dessin-marque, et comme elle l'a conclu dans la décision parallèle, qu'il est identique à la première partie de la marque de commerce ZARA HOME, en plus d'en être la partie dominante. Industria ajoute que les caractéristiques de conception du dessin-marque font primer le premier mot « ZARA » et renforcent sa thèse selon laquelle le mot « ZARA » est l'aspect le plus frappant du dessin-marque.

[23] Industria se fonde sur le paragraphe 78 de la décision rendue par la Cour fédérale dans *Restaurants la Pizzaiolle inc c Pizzaiolo Restaurants inc*, 2015 CF 240 [*Pizzaiolle CF*], qui mentionne ce qui suit :

En somme, cette différenciation dans le traitement de la question de la probabilité de confusion, et en particulier du concept d'emploi ultérieur, des deux Marques que la défenderesse cherche à faire enregistrer, a, à mon avis, opéré un bris dans la rationalité de la décision du Registraire, ce qui l'a fait glisser hors du champ des issues possibles acceptables pouvant se justifier au regard des faits et du droit.

[24] Dans l'arrêt *Pizzaiolo Restaurants inc c Les Restaurants La Pizzaiolle inc*, 2016 CAF 265 [*Pizzaiolo CAF*], la Cour d'appel fédérale a confirmé la décision rendue dans *Pizzaiolle CF*. En se fondant sur les paragraphes 28 à 32, Industria fait valoir qu'il conviendrait de suivre le même raisonnement en l'espèce, c'est-à-dire que, lorsque l'on examine les deux marques dans le même contexte, comme l'exige l'arrêt *Masterpiece* (avec le même style de lettrage, de couleur et de dessin), ZARA HOME et le dessin-marque ne sont pas plus différents que ZARA HOME et le mot servant de marque. Industria ajoute que les mots « Natural Stones » sont clairement descriptifs et qu'ils n'ajoutent donc que très peu de caractéristiques distinctives au dessin-marque.

[25] Industria insiste sur le fait que la Commission a appliqué le mauvais critère lorsqu'elle s'est concentrée sur les « caractéristiques visuelles distinctives » du dessin-marque et qu'elle aurait plutôt dû se pencher sur son élément frappant, soit le mot ZARA.

B. *La thèse de Natural Stones*

(1) La norme de contrôle

[26] Natural Stones affirme qu'en l'espèce, la preuve supplémentaire n'aurait pas eu un effet considérable sur la décision de la Commission; elle aurait toutefois eu un effet considérable sur les facteurs liés au caractère distinctif inhérent, au genre des marchandises et aux voies de commercialisation, qui ont été tranchés en faveur d'Industria (mémoire de la défenderesse, aux par. 32, 39 et 40). C'est donc la norme de contrôle de la décision correct qui devrait être appliquée à ces facteurs, tandis que la norme du caractère raisonnable devrait être appliquée à la décision de la Commission (mémoire de la défenderesse, aux par. 40 et 66).

[27] Natural Stones ne présente aucune autre observation à l'appui de sa thèse selon laquelle la preuve supplémentaire aurait eu un effet considérable sur le facteur du « caractère distinctif inhérent ». En fait, Natural Stones déclare plus loin qu'il a été conclu que ce facteur ne jouait en faveur d'aucune des parties (mémoire de la défenderesse, au par. 118).

[28] En ce qui concerne sa thèse selon laquelle la preuve supplémentaire aurait eu un effet considérable sur le facteur du « genre de produits », Natural Stones souligne que la Commission ne possédait aucune preuve de l'usage de la marque de commerce ZARA HOME, ce qui la rendait incapable de déterminer le type d'entreprise ou de commerce probable visé par Industria pour ZARA HOME. Natural Stones affirme que la Commission n'aurait pas conclu que les produits des parties se recoupaient, si elle avait obtenu une preuve supplémentaire de l'usage réel de la marque de commerce ZARA HOME.

[29] En ce qui concerne sa thèse selon laquelle la preuve supplémentaire aurait eu un effet considérable sur le facteur des « voies de commercialisation », Natural Stones réitère que la Commission a supposé que les voies de commercialisation des parties se recoupaient, parce qu'elle ne possédait aucune preuve de l'usage de la marque de commerce ZARA HOME. Natural Stones prétend qu'elle a produit une preuve de l'usage de la marque de commerce ZARA HOME afin d'expliquer les activités d'Industria et les voies de commercialisation de Natural Stones, sans en dire plus.

(2) La probabilité de confusion

[30] Natural Stones soutient que la Commission a rendu une décision raisonnable et correcte. Bien que l'appel interjeté par Industria se limite à l'appréciation du facteur du « degré de ressemblance » faite par la Commission, Natural Stones présente également des arguments sur d'autres critères.

[31] Natural Stones déclare que le critère applicable à la confusion est « celui de la première impression que laisse dans l'esprit du consommateur ordinaire plutôt pressé la vue [de la marque], alors qu'il [...] ne s'arrête pas pour réfléchir à la question en profondeur » (*Veuve Clicquot*, au paragraphe 20). Elle maintient que, en tenant compte de la nouvelle preuve, les facteurs énoncés au paragraphe 6(5) de la Loi penchent en faveur d'une conclusion selon laquelle il n'y a aucune probabilité de confusion au Canada.

[32] En ce qui concerne le facteur du « genre de produits et d'entreprises », la Commission a conclu en faveur d'Industria. Natural Stones prétend que ce facteur aurait joué en sa faveur, vu la

nouvelle preuve, qui montre l'usage de la marque de commerce ZARA HOME par Industria en Espagne et au Canada. Cela sous-entend que la marque de commerce est utilisée pour l'ameublement et des objets décoratifs. Natural Stones soutient également que les produits des parties ne se recoupent pas, parce que ceux d'Industria sont des revêtements de sol, classés dans la catégorie 27 du système de classification de Nice, tandis que les produits de Natural Stones sont des matériaux de construction non métalliques appartenant à la catégorie 19.

[33] En ce qui concerne le facteur des « voies de commercialisation », la Commission a conclu en faveur d'Industria. Natural Stones prétend que ce facteur aurait joué en sa faveur, vu la nouvelle preuve, qui montre l'usage réel de la marque de commerce ZARA HOME et qui démontre que les parties vendent leurs produits dans des types d'endroits différents qui visent des types de consommateurs différents. Natural Stones fait valoir que la preuve relative aux voies de commercialisation réelles est préférable à une spéculation sur de nouveaux projets et que la nature du commerce peut être suffisamment différente pour écarter toute possibilité de confusion (*Sum-Spec Canada c Imasco Retail Inc*, 30 CPR (3<sup>rd</sup>) 7, au par. 13).

[34] En ce qui concerne les facteurs du « caractère distinctif inhérent des marques de commerce, et la mesure dans laquelle elles sont devenues connues » et de la « période », Natural Stones souscrit à la conclusion de la Commission selon laquelle ils ne jouent en faveur d'aucune des parties.

[35] En ce qui concerne le facteur du « degré de ressemblance », celui qu'Industria conteste, Natural Stones maintient qu'il a été apprécié de façon raisonnable : la Commission a cité et

appliqué l'arrêt *Masterpiece* de la Cour suprême du Canada et elle a jugé, au paragraphe 64 de la décision, que le dessin-marque possédait des caractéristiques visuelles distinctives. Natural Stones soutient que la Commission n'avait pas à prendre en considération l'ensemble des usages possibles et non identifiés de la marque de commerce ZARA HOME d'Industria (*Domaines Pinnacle Inc c Constellation Brands Inc*, 2016 CAF 302, au par. 10 [*Domaines Pinnacle*]). Dans son mémoire, Natural Stones ne réplique pas à l'argument avancé par Industria selon lequel la Commission aurait dû suivre le même raisonnement que celui qu'elle avait suivi dans l'affaire parallèle.

[36] Natural Stones ajoute qu'Industria n'a produit aucune preuve de confusion réelle et que l'absence de confusion réelle est un facteur important (*Dion Neckwear Ltd c Christian Dior, SA*, 2002 CAF 29).

#### IV. ANALYSE

##### A. *La norme de contrôle*

[37] Les parties conviennent que l'appréciation du degré de ressemblance faite par la Commission, soit le seul élément que la demanderesse, Industria, conteste, est susceptible de contrôle selon la norme du caractère raisonnable; Natural Stones reconnaît que la nouvelle preuve n'a aucun effet considérable sur ce critère.

[38] Les parties conviennent également que la conclusion définitive tirée par la Commission devrait être contrôlée selon la norme du caractère raisonnable, puisque la preuve supplémentaire

présentée à la Cour n'aurait pas eu un effet considérable sur la conclusion de la Commission (mémoire de la demanderesse, aux par. 37 et 38; mémoire de la défenderesse, aux par. 34, 67 et 126).

[39] Étant donné que la Commission a conclu en faveur de Natural Stones et que la preuve supplémentaire ne vise que les facteurs jouant en faveur d'Industria, la Cour souscrit à l'opinion des parties selon laquelle cette preuve supplémentaire n'aurait pas eu un effet considérable sur la conclusion d'improbabilité de confusion tirée par la Commission. La norme du caractère raisonnable s'applique donc à la décision de la Commission.

B. *La probabilité de confusion*

[40] Comme il a déjà été mentionné, Natural Stones a présenté une demande d'enregistrement pour deux marques de commerce : le mot ZARA et le logo ZARA Natural Stones & Dessin. Industria s'est opposée à ces deux demandes en raison, entre autres, de la probabilité de confusion avec ses propres marques de commerce.

[41] Dans les deux instances, la Commission a analysé la probabilité de confusion entre les marques de commerce de Natural Stones et la marque de commerce ZARA HOME d'Industria, qui n'avait pas encore été approuvée aux fins d'enregistrement au moment où les décisions ont été rendues.

[42] L'analyse faite par la Commission sur la probabilité de confusion entre les marques de commerce de Natural Stones et la marque de commerce ZARA HOME, qui n'a pas encore été enregistrée, est identique dans les deux décisions, sauf pour le degré de ressemblance.

[43] Dans la décision examinée en l'espèce, la Commission a conclu en faveur de Natural Stones, ce qui signifie que le dessin-marque ne ressemble pas à ZARA HOME et qu'il est improbable qu'il crée de la confusion avec ZARA HOME. En particulier, la Commission s'est exprimée ainsi :

[64] Comme je l'ai mentionné précédemment, le [dessin-]marque comporte des caractéristiques visuelles distinctives. [II] est suggesti[f] des Marchandises, tandis que la marque de commerce ZARA HOME [d'Industria] est suggestive de l'environnement dans lequel les marchandises [d'Industria] pourraient être utilisées. Considérées dans leur ensemble, les marques des parties sont différentes, aussi bien sur les plans visuel et sonore que dans les idées qu'elles suggèrent. [...]

[44] Dans la décision parallèle, cependant, la Commission a conclu en faveur d'Industria, en ce que le mot servant de marque ressemble à ZARA HOME et qu'il est probable qu'il crée de la confusion avec ZARA HOME. En particulier, la Commission s'est exprimée ainsi :

[72] En définitive, je considère que les marques en cause se ressemblent. La partie dominante de la marque de commerce ZARA HOME est l'élément initial ZARA. Il a été dit que le premier élément d'une marque de commerce est souvent le plus important [voir *Conde Nast Publications Inc c Union des Editions Modernes* (1979), 46 CPR (2d) 183 (CF 1re inst);]. [Le mot servant de marque de Natural Stones] est identique à la première partie de la marque de commerce ZARA HOME [d'Industria], qui en est aussi la partie dominante. Cet important facteur joue en faveur [d'Industria].



[45] Dans les deux cas, la Commission analysait la ressemblance entre des marques de commerce dans lesquelles le premier mot ou le seul mot est « ZARA ». Dans l'une des décisions, la Commission s'est penchée sur la première composante et son impact, ce qui l'a menée à conclure que le mot « ZARA » était la composante la plus importante de la marque de commerce de chacune des parties; dans l'autre décision, toutefois, elle n'a pas mentionné l'importance du mot « ZARA ». La Cour suprême du Canada a conclu, au paragraphe 63 de l'arrêt *Masterpiece*, que le premier mot est important lorsqu'il s'agit d'apprécier la ressemblance entre deux marques de commerce. Il est toutefois impossible de conclure, selon les motifs exposés par la Commission dans ces deux instances, qu'elle a pris en considération cet élément dans son analyse de la probabilité de confusion entre le dessin-marque et ZARA HOME (*Newfoundland and Labrador Nurses' Union c Terre-Neuve-et-Labrador (Conseil du Trésor)*, 2011 CSC 62).

[46] La Cour fédérale a déclaré, dans la décision *Pizzaiolle CF*, décision que la Cour d'appel fédérale a confirmée, que « cette différenciation dans le traitement de la question de la probabilité de confusion, et en particulier du concept d'emploi ultérieur, des deux Marques que la défenderesse cherche à faire enregistrer, a, à mon avis, opéré un bris dans la rationalité de la décision du Registraire » (*Pizzaiolle*, au par. 78). De même, en l'espèce, la différenciation faite par la Commission dans le traitement de l'importance du premier mot « ZARA » dans ses deux décisions a opéré un bris dans la rationalité de la décision contestée, ce qui l'a fait glisser hors du champ des issues possibles acceptables pouvant se justifier au regard des faits et du droit (*Dunsmuir c Nouveau-Brunswick*, 2008 CSC 9, au par. 47).

[47] Le caractère intelligible de la décision rendue par la Commission est encore plus apparent, puisqu'elle n'a pas limité son examen à l'effet visuel du dessin-marque. Elle a conclu que « les marques des parties sont différentes, aussi bien sur les plans visuel et sonore que dans les idées qu'elles suggèrent » [non souligné dans l'original]. Même si je devais présumer que la Commission a considéré que les éléments graphiques du dessin-marque étaient suffisamment distinctifs pour constituer la partie dominante et la plus importante du dessin-marque, ce qui me porterait donc à conclure que les marques de commerce des parties sont suffisamment différentes sur le plan visuel, ce raisonnement ne soutient pas une conclusion selon laquelle les marques de commerce sont également différentes sur le plan sonore. Il semble clair que, sur le plan sonore, l'élément dominant des deux marques de commerce est le mot « ZARA », comme la Commission l'a conclu dans sa décision parallèle.

[48] Natural Stones a également présenté un certain nombre d'arguments sur l'analyse d'autres facteurs par la Commission, que je n'examinerai pas, parce que la demanderesse, Industria, n'a pas soulevé ces questions.

**JUGEMENT dans le dossier T-468-15**

**LA COUR STATUE que :**

1. l'appel est accueilli, et l'affaire est renvoyée à la Commission pour nouvelle décision;
2. les dépens sont adjugés en faveur de la demanderesse, Industria.

« Martine St-Louis »

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Juge

Traduction certifiée conforme  
Ce 10<sup>e</sup> jour de septembre 2019

C. Laroche, traducteur



Office de la propriété  
intellectuelle du Canada  
Un organisme  
d'Industrie Canada

Canadian Intellectual  
Property Office  
An Agency of  
Industry Canada

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Canada

## Office de la propriété intellectuelle du Canada

### Base de données sur les marques de commerce canadiennes

#### INFORMATION RELATIVE AUX MARQUES DE COMMERCE CANADIENNE

⇒ [Page de recherche](#)

\*\*\* Note L'information sur les marques de commerce est affichée dans la langue officielle dans laquelle elle est soumise.

La dernière mise à jour de la base de données remonte au : 2013-05-07

**NUMÉRO DE DEMANDE :**

1191134

**NUMÉRO D'ENREGISTREMENT :**

non enregistré

**STATUT :**

EN OPPOSITION

**PRODUITE :**

2003-09-17

**FORMALITÉS ACCOMPLIES :**

2003-10-06

**PUBLIÉE :**

2011-12-14

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INFORMATION RELATIVE AUX MARQUES DE COMMERCE CANADIENNE : 1... Page 2 sur 16

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**MARQUE DE COMMERCE :**

**ZARA HOME**

**RUBRIQUES D'INDEX :**

ZARA HOME

**MARCHANDISES :**

(1) Bleaching preparations and other substances for laundry use, namely: bleach, soap, softener, anti-static agents, starch, detergents; cleaning, polishing, scouring and abrasive preparations in powder, crystal, or liquid form for the cleaning of textile and cloth, denim and canvas-based fabric. Soaps, namely: toilet soaps, perfumed soaps and antibacterial soaps for personal use. Perfumery, namely: perfumes, concentrated perfumes, eau de Cologne, lavender water, perfume water, scented water, toilet water, extracts of flowers for perfumery, perfumed oils, bases for flower perfumes, salts, gels, creams, crystal and foam for the bath and shower; essential oils for personal use. Cosmetics, namely: adhesives for affixing false eyelashes and false hair; almond milk for skin care; creams, gels, sprays to protect from the sun; anti-wrinkle cream; beard dye; beauty skin masks; creams, lotions and gels to bleach the skin, hair, eyebrows and eye-lashes; brilliantine; bronzing lotions; cleansing skin creams, cleansing skin milks; cosmetic skin creams; cosmetic hair dye; cosmetic lotions, milks, gels, creams, oils, balms for skin care; creams, gels, oils, milks for slimming purposes; hydrating, energising, relaxing bath salts, crystals, foam and gels; cotton swabs

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for cosmetic purposes; day time skin creams; ephemeral decorative tattoos; depilatory creams, sheets, strips, wax; eyeliner, blush; lip, eye, eyebrow and eyelashes pencils; eye shadow; facial skin masks; firming eye cream; greases for skin and hair care; hand cream; hydrogen peroxide for hair care; lipsticks, lip gloss; liquid foundation; make-up powder; make-up removing milk, gels and lotions; mascara; moisturising skin cream; moustache wax; nail polish, enamels; oils for skin and hair care; paper guides for eye make-up; petroleum jelly for skin and hair care; protective creams for the lips; eyebrow, eyelashes and eye pencil sharpeners; shaving creams, foams, gels and balms; hair sprays; sun-tanning creams, gels, oils and lotions; tinted skin creams; tissues impregnated with cosmetic lotions for cleaning, peeling and hydrating the skin; nail-varnish remover; hair lotions; dentifrices, oils for toilet purposes, blueing for laundry, cotton(-tipped) sticks for cosmetic purposes, shoe cream, shoe polish, shoemaker's wax and pitch, hair shampoos, hair dyes; hair, eyebrow and eyelashes decolorants, deodorants for personal use (perfumery); extracts of flowers (perfumes); paper guides for painting eyes, incense, scented wood, hair spray and nail polish, pencils for cosmetic use and for eyelashes, lipsticks; after-shave lotions; lotions for cosmetic purposes; beauty masks; decorative transfers for cosmetic purposes; kits of cosmetics for hair and skin care, composed of shampoo, conditioner, skin cream, lotion and mask sold as a whole; kits of cosmetics for make-up composed of mascara, lip gloss, lipstick, blush-powder sold as a whole; false eyelashes, false fingernails, pumice stone, potpourris; fragrances; pomades for cosmetic use, cosmetic preparations for slimming purposes; cosmetic preparations for baths, cosmetic preparations for skin care, sun-tanning preparations [cosmetics]; hair waving preparations, namely: gels, balms, creams, shampoos, masks, foam, sprays and lotions; laundry preparations, namely: antibacterial soaps; depilatory preparations; sanitary preparations for toiletry, namely: mouthwash, dental floss, toothbrush, toothpaste; non-medical preparations for facial treatment, for hair treatment and hair care, namely: lotions, gels, masks, balms, shampoos, conditioners, creams for the beauty and the health of the skin and hair; make-up removing preparations, shaving preparations, fingernail care preparations. Preparations for perfuming linen, namely: sachets and scented water for linen, scented water for ironing; varnish removing preparations, colour brightening chemicals for household purposes (laundry); stain removers. Tissues impregnated with cosmetic skin lotions, namely: paper handkerchief and wipes. Glass cloth. Industrial oils and greases; lubricants, namely: automobile lubricants, industrial lubricants; dust absorbing lubricants; wetting and binding compositions; fuels and illuminants, namely: motor spirits, diesel, methanol and ethanol; candles and wicks for lighting; grease for boots; grease for leather. Pharmaceutical and veterinary preparations, namely: vaccines for both human and veterinary use, medicines under solid and liquid form for both human and veterinary use against fleas, ticks, acne, headache; dietetic substances adapted for medical use, namely: vitamins, minerals, lecithin; baby food; plasters; medical and surgical dressings; material for stopping teeth, dental wax; all purpose disinfectants; preparations for destroying vermin; fungicides, herbicides; bath salts for medical purposes; compresses; cotton for medical purposes; deodorants, other than for personal use, namely: deodorant sprays for the house, perfumed stones, scented woods, potpourris, perfumed candles; hygienic bandages; lotions for pharmaceutical purposes, namely: anti-acne lotions, insect repellent lotions; medicine portable filled cases; menstruation pads, menstruation tampons; mineral water for medical purposes; mouthwashes for medical purposes; napkins for incontinents; chemical preparations for the diagnosis of pregnancy; salts for mineral water baths; sanitary panties; sanitary pants; pharmaceutical preparations for skin care, namely: anti-inflammatory, anti-infective, decongestants, astringents, anti-allergy solutions; smelling salts; solutions for use with contact lenses; sunburn ointments; surgical cloth [tissues]; surgical tissues. Common metals and their alloys; metal building materials, namely: construction elements of metal used for the constructions of short-term buildings for expositions, conferences, shows, cultural, sport events, namely: aluminum profiles, girders; transportable buildings of metal; materials of metal for railway tracks, namely: rails; non-electric cables and wires of common metal; Ironmongery; small items of metal hardware, namely: clamps, screws, crampons, nails, pins, grates, hoods, grills, drainage grills, manholes and manholes covers; pipes and tubes of metal; safes; goods of common metal, namely: metal boxes, mugs, cutlery bowls, bolts and nuts, dishes, glasses, cutlery; bells; bins of metal; buckles of common metal; chests of metal; non-electric door bells; hooks [metal hardware]; ice moulds of metal; identity plates of metal; knobs of metal; money boxes of metal; padlocks; poles of metal; pot hooks of metal; preserve tins; preserving boxes of metal; rings of common metal for keys; signboards of metal; steps [ladders] of metal; tins; tool boxes of metal sold empty; burial vaults of metal; wire cloth; wire gauze; works of art of common metal, namely: statues, sculptures; ores of metal. Hand-

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operated hand tools and implements, namely hammers, drills, measuring tapes, saws; cutlery; side arms, namely: swords, bayonets; razors; non-electric can openers; hand implements for hair curling, namely: curling irons, curling pins; electric and non-electric depilation appliances, namely: shavers and razors, electrolysis depilatory kits and electric hair shavers; nutcrackers not of precious metals, electric and non-electric nail clippers, manicure sets; shaving cases, namely: boxes to range shaving products and razors; razor cases, razor blades; shoemaker's hand tools, namely: shoe lasts; fingernail files, electric and non-electric hair clippers, beard clippers, shaving sets, hair removing tweezers, fingernail nippers, rasps [hand tools], scissors. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, namely: anti-glare glasses, pince-nez chains, contact lenses, pince-nez cords, eyeglass lenses, eyeglass cases for pince-nez and contact lenses; frames for eyeglasses and pince-nez; spectacles, sunglasses, pince-nez, supplementary lenses; lens hoods, magnetic encoded cards, electronic diaries, decimal weighbridges, sliding-weight weighbridges; directional compasses, electronic calculators, kaleidoscopes, measuring spoons, pedometers, optical mirrors, binoculars, computer printers, thermometers, barometers, automatic coin-operated amusement machines, electric and galvanic batteries, electric irons, electronic pocket translators, transistors, electronic amusement apparatus adapted for use with television receivers only. Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely: electricity meters, voltmeters, electric batteries and accumulators, electric batteries chargers, electric transformers, voltage regulators, flashlights, battery powered wall lights and Christmas lights; apparatus for recording, transmission or reproduction of sound or images, namely: receivers, integrated amplifiers, tuners, control amplifiers, power amplifiers, compact disc players, headphones, televisions, video cassette recorders, video disc players, camera, video cameras, movie cameras, memory sticks; blank magnetic data carriers, namely: computer disks, memory sticks, audio cassettes, tapes and cards, magnetic identification card, magnetically encoded credit and debit cards; recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishers; accounting machines; electronic agendas; anti-glare glasses; protective suits of aviators; bar code readers; electric batteries, binoculars, bullet-proof vests; magnetic encoded cards; eyeglass cases; cassette players; chronographs; fire protective clothing, radiation protective clothing, motorcyclist protective clothing; recorded audio-video compact discs containing films, songs, news, documentaries, video games, music; read-only memory compact discs; directional compasses; recorded computer operating programs; recorded computer software, namely: computer game programs, computer operating programs, computer programs for use in data base management, accountancy, for use as a spread sheet, for word processing, for stock control; computer printers; contact lenses; container for contact lenses; mechanism for coin-operated dispensing machines; dictating machines; diving suits; patterns for dressmaking; electronic pocket translators; eyeglass chains; eyeglass cords; eyeglass frames; eyeglasses; instruments containing eyepieces, namely: telescopes, microscopes; electric flat irons; floats for bathing and swimming; galvanic batteries; apparatus for games adapted for use with television receivers only; garments for protection against fire; gloves for divers; gloves for protection against accidents; invoicing machines; magic lanterns; optical lanterns; optical lenses; life jackets; optic magnifying glasses; measuring spoons; mirrors (optics); computer mouse; pedometers; protective helmets; egg timers (sandglasses); shoes for protection against accidents, irradiation and fire; signal lanterns; spectacle cases; spectacle frames; spectacle glasses; spectacles (optics); sunglasses, swimming jackets; telephone apparatus, namely: telephone answering machines, intercoms, telephone automatic diallers, telephones cellular phone; temperature indicators; thermometers, not for medical purposes; electronic transistors; weighbridges; weights. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely: florescent lighting tubes, electric track lighting units; solar heating panels, electric heaters for baby bottles, hot water heater, portable electric heaters; steam generators; refrigerators, freezers, fans, water dispensers; bath tubs; bidets; electric blankets; burners; coffee machines, electric; electric and gas cookers; electric heating cushions [pads] not for medical purposes; drying apparatus, namely: electric hand dryers, dress dryers, garment dryers and hair dryers; tumble dryers; electric heaters for feeding bottles; flares; flashlights (torches); griddles; hair dryers; lamps; lamp globes; lamp shades; lanterns; electric laundry dryers; light bulbs; electric light bulbs; lighters; pocket searchlights; showers; sinks; taps [faucets]; toasters; toilet bowls; wash-hand basins. Apparatus for locomotion by land, air or water, namely:

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automobiles, off-road all terrain motor vehicles, trucks, motor vehicles for the transport of passengers and goods, motor lorries, vans, buses, motorboats, airplanes, helicopters, seaplanes, gliders, hang gliders; sun-blinds adapted for automobiles; bicycles; cleaning trolleys; golf carts; pushchairs, saddle covers for bicycles or motorcycles; safety belts for vehicle seats; safety seats for children for vehicles; seat covers for vehicles; shopping trolleys carts; sleighs [vehicles]; tricycles; shaped vehicle covers; baby carriages. Precious metals and their alloys and goods in precious metals or coated therewith, namely: rings, necklace, chains, earrings, bracelets, pins, hairpins; jewellery, precious stones; horological and chronometric instruments, namely: watches, chronometers, clocks; ashtrays, of precious metal for smokers; badges of precious metal; boxes of precious metal; coins; cuff links. Gold and silver ware, other than cutlery, forks and spoons, namely: vases, glasses plates, chains, key chains; hat ornaments of precious metal; key rings [trinkets or fobs]; medals; napkin rings of precious metal; needle cases of precious metal; ornamental pins; shoe ornament of precious metal; tie pins; works of art of precious metal, namely: statues, sculptures, bibelots; costume jewellery. Paper, cardboard and goods made from these materials, namely: fax paper, gift wrapping paper, wrapping paper, grocery paper, illustration paper, note paper, opaque paper, parchment paper, photosensitive paper, printing paper, recycled paper, reproduction paper, typewriter paper, writing paper; printed matter, namely: calendars, almanacs, posters, lithographs, greeting cards, note cards, blank cards; bookbinding material, namely: bookbinding adhesive, loose-leaf binders, cloth for bookbinding, cords for bookbinding; photographs; stationery, namely: wrapping paper for books, adhesive tape dispenser, envelopes, diaries, scrapbooks, address books; adhesives for stationery or household purposes; artists' materials, namely: oil paint, paint brushes, pigments, oil pastels, pastels, palettes for painters, canvas for painting; typewriters; office requisites (except furniture), namely: rulers, rubber-bands; instructional and teaching material (except apparatus), namely: printed forms and printed guides for conducting classes, seminars, workshops in the field of fashion, dressmaking, improving business habits and business skills, information material in the form of manuals, video tapes in the field of marketing, fashion, dressmaking, management and administration; plastic materials for packaging, namely: tubing, casings, bags, envelopes, pouches and sheets made of plastic for use as packaging material; printers' type; printing blocks; albums; almanacs; disposable babies' diapers of paper and cellulose; disposable babies' napkin-pants [diaper-pants] of paper and cellulose; bags [envelopes, pouches] of paper or plastics for packaging; loose-leaf binders; bookends; bookmarkers; books; boxes for pens; boxes of cardboard or paper; calendars; cheque book holders; chromolithographs [chromos]; decalcomanias; drawing sets; engravings; fabrics for bookbinding; face towels of paper; folders for papers; hand labelling appliances, namely: label printing machines; handkerchiefs of paper; hat boxes of cardboard; passport holders, hygienic paper; ink; inking sheets for document reproducing machines; inkwells; labels, not of textile; lithographs; mats for beer glasses; table napkins of paper; napkins of paper for removing make-up; packing paper; paperweights; patterns for dressmaking; patterns for making clothes; periodicals; posters; printed publications, namely: magazines, newspapers, books, catalogues; sealing wax; stencil cases; table linen of paper, namely: napkins, table-cloths, tray-cloths; tailors' chalk; towels of paper; tracing cloth. Writing cases [sets]; writing instruments, namely: ball-point pens, pencils for writing, pens, markers; writing materials, namely: blotting paper, blotting pads. Leather and imitations of leather, and goods made of these materials, namely: animal skins, hides, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness and saddlery, bags for climbers and campers, handbag frames, umbrella frames, purses, handbags, linings of leather for boots and shoes, key cases, attaché-cases, school bags, garments bags for travel, hat boxes of leather, sling bags for carrying infants, wheeled shopping bags, boxes of leather or of leather board, wallets, briefcases, vanity cases (not fitted), collars for animals, leather lashes, leather laces, umbrella covers, covers for horse saddles, rucksacks, haversacks, music cases, bags (envelopes, pouches) of leather for packaging; backpacks; boxes of vulcanised fibre; cases of leather or of leatherboard; frames for parasols; garment bags for travel; handbags; key cases [leatherware]; pocket wallets; purses; purses, not of precious metal; school satchels; sling bags for carrying infants; suitcases; travelling sets [leatherware]; vanity cases [not fitted]. Furniture, namely: sofa, chairs, recliners, tables, desks, lamps, mirrors, buffets, pictures, bookshelves; picture frames; goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerscham and substitutes for all these materials, or of plastics, namely: decorative boxes and pills boxes, cutlery handles not made of metal, tops, lids and stoppers not made of metal, coasters made of plastics or cork, napkin rings not made of metal, jewellery and eyeglass frames; photo-frames; mirror frames;



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combs; comb handles; babies' pacifiers; fans, pillows, curtain rings, chests not of metal, cupboards, benches (furniture), table trays/tops), folding screens (furniture), frames, wooden or plastic boxes/cases, chests for toys, beds, head-rests (furniture), trolleys (furniture), bottle racks; brushes, namely: clothes brushes, nail brushes; baskets not of metal, cushions, mattresses, drawer chests, bamboo curtains, cradles, divans, shelves, mirrors, display racks, filing cabinets, garment covers [storage]; bed and furniture covers, hammocks, flower-stands [furniture], jewellery cases [caskets] not of precious metals, dressmaker's dummies, tables; works of art, of wood, wax plaster or plastic, namely: sculptures, statues, bibelots, paints, boxes, vases; umbrella stands, playpens for babies, dress and hat hangers, coat hangers, sleeping bags for camping, chairs (seats), sofas, footstools for children, embroidery frames, high chairs for babies/children, deck chairs. Household or kitchen utensils and containers (not of precious metal nor coated therewith); combs and sponges, namely: bath sponges, sponges for applying body powder, scouring sponges, combs and sponges for the toilet and grooming of pets and horses; brushes (except paint brushes), namely: toilet brushes, hair brushes, shaving brushes, brushes for pets, brushes for footwear, toothbrushes, powder brushes for makeup; brush-making materials, namely: brush shafts and bristle, natural wild oar hair, plastic fibre and filaments for use in tooth brushes; articles for cleaning purposes, namely: cleaning rags, packing-cloth, cleaning cotton, cleaning pads; steelwool; unworked or semi-worked glass (except glass used in building); beverage, crockery, china and decorative glassware, porcelain and earthenware; bottle openers, oil cruets, cocktail stirrers, candle extinguishers, non-electric make-up removing appliances, namely: wipes, napkins and cloths; cotton swabs; sugar bowls, trays, portable baby baths, cloth for washing floors and kitchen, glass bowls, tea balls, boxes for sweetmeats; bottles, namely: baby bottles, hot water bottles, ink bottles, oil bottles, perfume bottles, vacuum bottles, water bottles: shaving brushes, pottery, coffeepots; boxes, namely: metal boxes, music boxes, metal tool boxes, glass boxes, lunch boxes, metal cash boxes, mail boxes, pill boxes, decorative boxes, jewellery boxes; non-electric heaters for feeding bottles, shoe horns, candle sticks/candelabras, wine-tasters' pipettes, fly catchers, epergnes/table center pieces, brushes for footwear; baskets, namely: flower baskets, picnic baskets, sewing baskets, wastepaper basket; water and air strainers, trouser hangers (stretchers), ice buckets, tie presses, door handles of porcelain, comb cases, ironing board covers, gardening gloves, gloves for household purposes, polishing gloves, shoe trees (stretchers), piggy banks not of metal, soap boxes, decanters, bird cages, butter dishes; toilet kits, namely: sets containing toilet utensils and articles namely hair brushes, combs and sponges, soaps, Cologne water, mirror, nail-file, nail-scissors sold as a whole; works of art of porcelain, terracotta or glass, namely: vases, decorative plates, statues, sculptures, boxes, bibelots, decorative frames; toothpick holders, carpet beaters, bread bins, dusting cloths (rags), pepper pots, clothes-pegs and drying racks for washing, plates, dusters, powder boxes (compacts), shaving brush stands, sponge holders, toilet paper holders, trouser presses, perfume sprayers and vaporizers, graters, crumb trays, bottle coasters, plate coasters/trivets, boot jacks, salt cellars, clothes racks for drying, coffee and tea services, napkin rings, washing boards, ironing boards, bread boards, cutting boards for the kitchen, cups, shirt stretchers, shoe stretchers, teapots, flower pots; toilet utensils, namely: combs and sponges, nail-file, nail-scissors, pumice stones; tableware other than knives, forks and spoons, namely: plates, glasses, dishes, trays; drinking glasses, cruets (vinegar). Ropes, string, nets, tents, awnings, sails, sacks; bags, namely: bags for washing hosiery, laundry bags, multi-purpose bags, cloth bags, garbage bags, plastic food storage bags, vacuum cleaner bags; padding and stuffing materials (except of rubber or plastics), namely: feathers, polyester fibres; raw fibrous textile materials, namely: silk, wool, cotton and linen; bottle envelopes of straw; eiderdown; hammocks; tarpaulins. Textiles and textile goods, namely: table covers, pocket and handkerchiefs, kerchiefs, textile fabric and towels; bed and table linen; curtain holders of textile material, banners, flags (not of paper), table runners, bedspreads, textile or plastic curtains, eiderdown coverlets [down coverlets], cloth labels, textile linings, mattress covers, loose covers for furniture, covers for cushions, mitts [washing], oilcloth for use as tablecloths, bed blankets, travelling rugs [lap robes], table cloths not of paper, mosquito nets, handkerchiefs of textile, blinds of textile, bath linen (except clothing); household linen, namely: dish cloths, dusters; sheets [textile], sleeping bags [sheeting], coasters [table linen], paper and textile napkins, billiard cloth, wall hangings of textile, traced cloth for embroidery; cloth towels, glass cloth, polishing cloth, furniture cloths, towels of textile, face towels of textile, napkins for removing make-up (cloth), net curtains. Clothing for women, men and children, namely: athletic clothing, baby clothing, belts, bullet-proof clothing, business clothing, casual clothing, children's clothing, dress clothing, fire retardant clothing, infant clothing, jackets, outdoor winter clothing, sports clothing, sun

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

(2) Bleaching preparations and other substances for laundry use, namely: bleach, soap, softener, anti-static agents, starch, detergents; cleaning, polishing, scouring and abrasive preparations in powder, crystal, or liquid form for the cleaning of textile and cloth, denim and canvas-based fabric. Soaps, namely: toilet soaps, perfumed soaps and antibacterial soaps for personal use; perfumery, namely: perfumes, concentrated perfumes, eau de Cologne, lavender water, perfume water, scented water, toilet water, extracts of flowers for perfumery, perfumed oils, bases for flower perfumes, salts, gels, creams, crystal and foam for the bath and shower; essential oils for personal use; cosmetics, namely: adhesives for affixing false eyelashes and false hair; almond milk for skin care; creams, gels, sprays to protect from the sun; anti-wrinkle cream; beard dye; beauty skin masks; creams, lotions and gels to bleach the skin, hair, eyebrows and eye-lashes; brilliantine; bronzing lotions; cleansing skin creams, cleansing skin milks; cosmetic skin creams; cosmetic hair dye; cosmetic lotions, milks, gels, creams, oils, balms for skin care; creams, gels, oils, milks for slimming purposes; hydrating, energising, relaxing bath salts, crystals, foam and gels; cotton swabs for cosmetic purposes; day time skin creams; ephemeral decorative tattoos; depilatory creams, sheets, strips, wax; eyeliner, blush; lip, eye, eyebrow and eyelashes pencils; eye shadow; facial skin masks; firming eye cream; greases for skin and hair care; hand cream; hydrogen peroxide for hair care; lipsticks, lip gloss; liquid foundation; make-up powder; make-up removing milk, gels and lotions; mascara; moisturising skin cream; moustache wax; nail polish, enamels; oils for skin and

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hair care; paper guides for eye make-up; petroleum jelly for skin and hair care; protective creams for the lips; eyebrow, eyelashes and eye pencil sharpeners; shaving creams, foams, gels and balms; hair sprays; sun-tanning creams, gels, oils and lotions; tinted skin creams; tissues impregnated with cosmetic lotions for cleaning, peeling and hydrating the skin; nail-varnish remover; hair lotions; dentifrices, oils for toilet purposes, blueing for laundry, cotton(-tipped) sticks for cosmetic purposes, shoe cream, shoe polish, shoemaker's wax and pitch, hair shampoos, hair dyes; hair, eyebrow and eyelashes decolorants, deodorants for personal use (perfumery); extracts of flowers (perfumes); paper guides for painting eyes, incense, scented wood, hair spray and nail polish; pencils for cosmetic use and for eyelashes, lipsticks; after-shave lotions; lotions for cosmetic purposes; beauty masks; decorative transfers for cosmetic purposes; kits of cosmetics for hair and skin care, composed of shampoo, conditioner, skin cream, lotion and mask sold as a whole; kits of cosmetics for make-up composed of mascara, lip gloss, lipstick, blush-powder sold as a whole; false eyelashes, false fingernails, pumice stone, potpourris; fragrances; pomades for cosmetic use, cosmetic preparations for slimming purposes; cosmetic preparations for baths, cosmetic preparations for skin care, sun-tanning preparations [cosmetics]; hair waving preparations, namely: gels, balms, creams, shampoos, masks, foam, sprays and lotions; laundry preparations, namely: antibacterial soaps; depilatory preparations; sanitary preparations for toiletry; namely: mouthwash, dental floss, toothbrush, toothpaste; non-medical preparations for facial treatment, for hair treatment and hair care, namely: lotions, gels, masks, balms, shampoos, conditioners, creams for the beauty and the health of the skin and hair; make-up removing preparations, shaving preparations, fingernail care preparations. Preparations for perfuming linen, namely: satchels and scented water for linen, scented water for ironing; varnish removing preparations, colour brightening chemicals for household purposes (laundry); stain removers. Tissues impregnated with cosmetic skin lotions. namely: paper handkerchief and wipes. Glass cloth. Industrial oils and greases; lubricants, namely: automobile lubricants, industrial lubricants; dust absorbing lubricants; wetting and binding compositions; fuels and illuminants, namely: motor spirits, diesel, methanol and ethanol; candles and wicks for lighting; grease for boots; grease for leather; moistening oil for industrial purposes; briquettes. Pharmaceutical and veterinary preparations, namely: vaccines for both human and veterinary use, medicines under solid and liquid form for both human and veterinary use against flees, ticks, acne, headache; dietetic substances adapted for medical use, namely: vitamins, minerals, lecithin; baby food; plasters; medical and surgical dressings; material for stopping teeth, dental wax; all purpose disinfectants; preparations for destroying vermin; fungicides, herbicides; bath salts for medical purposes; compresses; cotton for medical purposes; deodorants, other than for personal use, namely: deodorant sprays for the house, perfumed stones, scented woods, potpourris, perfumed candles; hygienic bandages; lotions for pharmaceutical purposes, namely: anti-acne lotions, insect repellent lotions; portable filled medicine cases; menstruation pads, menstruation tampons; mineral water for medical purposes; mouthwashes for medical purposes; napkins for incontinents; chemical preparations for the diagnosis of pregnancy; salts for mineral water baths; sanitary panties; sanitary pants; pharmaceutical preparations for skin care, namely: anti-inflammatory, anti-infective, decongestants, astringents, anti-allergy solutions; smelling salts; solutions for use with contact lenses; sunburn ointments; surgical cloth [tissues]; surgical tissues; tissues impregnated with pharmaceutical lotions; Common metals and their alloys; metal building materials, namely: construction elements of metal used for the constructions of short-term buildings for expositions, conferences, shows, cultural, sport events, namely: aluminum profiles, girders; transportable buildings of metal; materials of metal for railway tracks, namely: rails; non-electric cables and wires of common metal; Ironmongery, small items of metal hardware, namely: clamps, screws, crampons, nails, pins, grates, hoods, grills, drainage grills, manholes and manholes covers; pipes and tubes of metal; safes; goods of common metal, namely: metal boxes, mugs, cutlery bowls, bolts and nuts, dishes, glasses, cutlery; bells; bins of metal; buckles of common metal; chests of metal; non-electric door bells; hooks [metal hardware]; ice moulds of metal; Identity plates of metal; knobs of metal; money boxes of metal; padlocks; poles of metal; pot hooks of metal; preserve tins; preserving boxes of metal; rings of common metal for keys; signboards of metal; steps [ladders] of metal; tins; tool boxes of metal sold empty; burial vaults of metal; wire cloth; wire gauze; works of art of common metal, namely: statues, sculptures; ores of metal. Hand-operated hand tools and implements, namely hammers, drills, measuring tapes, saws; cutlery; side arms, namely: swords, bayonets; razors; non-electric can openers; hand implements for hair curling, namely: curling irons, curling pins; electric and non-electric depilation appliances, namely: shavers and razors, electrolysis depilatory kits and electric hair shavers; nutcrackers not of precious

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metals, electric and non-electric nail clippers, cutlery (knives, forks and spoons), manicure sets; shaving cases, namely: boxes to range shaving products and razors; razor blade cases, razor blades; shoemaker's hand tools, namely: shoe lasts; fingernail files, electric and non-electric hair clippers, beard clippers, shaving sets, hair removing tweezers, fingernail nippers, rasps [hand tools], scissors. Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments, namely: anti-glare glasses, pince-nez chains, contact lenses, pince-nez cords, eyeglass lenses, eyeglass cases for pince-nez and contact lenses; frames for eyeglasses and pince-nez; spectacles, sunglasses, pince-nez, supplementary lenses; lens hoods, magnetic encoded cards, electronic diaries, decimal weighbridges, sliding-weight weighbridges; directional compasses, electronic calculators, kaleidoscopes, measuring spoons, pedometers, optical mirrors, binoculars, computer printers, thermometers, barometers, automatic coin-operated amusement machines, electric and galvanic batteries, electric irons, electronic pocket translators, transistors, electronic amusement apparatus adapted for use with television receivers only; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, namely: electricity meters, voltmeters, electric batteries and accumulators, electric batteries chargers, electric transformers, voltage regulators, flashlights, battery powered wall lights and Christmas lights; apparatus for recording, transmission or reproduction of sound or images, namely: receivers, integrated amplifiers, tuners, control amplifiers, power amplifiers, compact disc players, headphones, televisions, video cassette recorders, video disc players, camera, video cameras, movie cameras, memory sticks; blank magnetic data carriers, namely: computer disks, memory sticks, audio cassettes, tapes and cards, magnetic identification card, magnetically encoded credit and debit cards; recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishers; accounting machines; electronic agendas; anti-glare glasses protective suits for aviators; bar code readers; batteries, electric; binoculars; bullet-proof vests; encoded magnetic cards; eyeglass cases; cassette players; chronographs; fire protective clothing, radiation protective clothing, motorcyclist protective clothing; recorded audio-video compact discs containing films, songs, news, documentaries, video games, music; read-only memory compact discs; directional compasses; recorded computer operating programs; recorded computer software, namely: computer game programs, computer operating programs, computer programs for use in data base management, accountancy, for use as a spread sheet, for word processing, for stock control; computer printers; contact lenses; container for contact lenses; mechanism for coin-operated dispensing machines; dictating machines; diving suits; patterns for dressmaking; electronic pocket translators; eyeglass chains; eyeglass cords; eyeglass frames; eyeglasses; instruments containing eyepieces, namely: telescopes, microscopes; electric flat irons; floats for bathing and swimming; galvanic batteries; apparatus for games adapted for use with television receivers only; garments for protection against fire; gloves for divers; gloves for protection against accidents; invoicing machines; magic lanterns; optical lanterns; optical lenses; life jackets; magnifying glasses [optics]; measuring spoons; mirrors [optics]; computer mouse; pedometers; protective helmets; egg timers (sandglasses); shoes for protection against accidents, irradiation and fire; signal lanterns; spectacle cases; spectacle frames; spectacle glasses; spectacles [optics]; sunglasses, swimming jackets; telephone apparatus, namely: telephone answering machines, intercoms, telephone automatic diallers, telephones cellular phone; temperature indicators; thermometers, not for medical purposes; electronic transistors; weighbridges; weights. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely: florescent lighting tubes, electric track lighting units; solar heating panels, electric heaters for baby bottles, hot water heater, portable electric heaters; steam generators; refrigerators, freezers, fans, water dispensers; bath tubs; bidets; electric blankets; burners; electric coffee machines; electric and gas cookers; electric heating cushions [pads] not for medical purposes; drying apparatus, namely: electric hand dryers, dress dryers, garment dryers and hair dryers; tumble dryers; electric heaters for feeding bottles; flares; flashlights (torches); griddles; hair dryers; lamps; lamp globes; lamp shades; lanterns; electric laundry dryers; light bulbs; electric light bulbs; lighters; pocket searchlights; showers; sinks; taps [faucets]; toasters; toilet bowls; wash-hand basins. Apparatus for locomotion by land, air or water, namely: automobiles, off-road all terrain motor vehicles, trucks, motor vehicles for the transport of passengers and goods, motor lorries, vans, buses, motorboats, airplanes, helicopters, seaplanes, gliders, hang gliders; sun-blinds adapted for automobiles; bicycles; cleaning trolleys; golf carts; pushchairs, saddle covers for bicycles or

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motorcycles; safety belts for vehicle seats; safety seats for children for vehicles; seat covers for vehicles; shopping trolleys carts; sleighs [vehicles]; tricycles; shaped vehicle covers; baby carriages. Precious metals and their alloys and goods in precious metals or coated therewith, namely: rings, necklace, chains, earrings, bracelets, pins, hairpins; jewellery, precious stones; horological and chronometric instruments, namely: watches, chronometers, clocks; ashtrays of precious metal for smokers; badges of precious metal; boxes of precious metal; coins; cuff links. Gold and silver ware, other than cutlery, forks and spoons, namely: vases, glasses plates, chains, key chains; hat ornaments of precious metal; key rings [trinkets or fobs]; medals; napkin rings of precious metal; needle cases of precious metal; ornamental pins; shoe ornament of precious metal; tie pins; works of art of precious metal, namely: statues, sculptures, bibelots; costume jewellery. Paper, cardboard and goods made from these materials, namely: fax paper, gift wrapping paper, wrapping paper, grocery paper, illustration paper, note paper, opaque paper, parchment paper, photosensitive paper, printing paper, recycled paper, reproduction paper, typewriter paper, writing paper; printed matter, namely: calendars, almanacs, posters, lithographs, greeting cards, note cards, blank cards; bookbinding material, namely: bookbinding adhesive, loose-leaf binders, cloth for bookbinding, cords for bookbinding; photographs; stationery, namely: wrapping paper for books, adhesive tape dispenser, envelopes, diaries, scrapbooks, address books; adhesives for stationery or household purposes; artists' materials, namely: oil paint, paint brushes, pigments, oil pastels, pastels, palettes for painters, canvas for painting; typewriters; office requisites (except furniture), namely: rulers, rubber-bands; instructional and teaching material (except apparatus), namely: printed forms and printed guides for conducting classes, seminars, workshops in the field of fashion, dressmaking, improving business habits and business skills, information material in the form of manuals, video tapes in the field of marketing, fashion, dressmaking, management and administration; plastic materials for packaging, namely: tubing, casings, bags, envelopes, pouches and sheets made of plastic for use as packaging material; Printers' type; printing blocks; albums; almanacs; disposable babies' diapers of paper and cellulose; disposable babies' napkin-pants [diaper-pants] of paper and cellulose; bags [envelopes, pouches] of paper or plastics, for packaging; loose-leaf binders; bookends; bookmarkers; books; boxes for pens; boxes of cardboard or paper; calendars; cheque book holders; chromolithographs [chromos]; decalcomanias; drawing sets; engravings; fabrics for bookbinding; face towels of paper; folders for papers; hand labelling appliances, namely: label printing machines; handkerchiefs of paper; hat boxes of cardboard; passport holders; hygienic paper; ink; inking sheets for document reproducing machines; inkwells; labels not of textile; lithographs; mats for beer glasses; table napkins of paper; napkins of paper for removing make-up; packing paper; paperweights; patterns for dressmaking; patterns for making clothes; periodicals; posters; printed publications, namely: magazines, newspapers, books, catalogues; sealing wax; stencil cases; table linen of paper, namely: napkins, table-cloths, tray-cloths; tailors' chalk; towels of paper; tracing cloth. Writing cases [sets]; writing instruments, namely: ball-point pens, pencils for writing, pens, markers; writing materials, namely: blotting paper, blotting pads. Leather and imitations of leather, and goods made of these materials, namely: animal skins, hides, trunks and travelling bags, umbrellas, parasols, walking sticks, whips, harness and saddlery, bags for climbers and campers, handbag frames, umbrella frames, purses, handbags, linings of leather for boots and shoes, key cases, attaché-cases, school bags, garments bags for travel, hat boxes of leather, sling bags for carrying infants, wheeled shopping bags, boxes of leather or of leather board, wallets, briefcases, vanity cases (not fitted), collars for animals, leather lashes, leather laces, umbrella covers, covers for horse saddles, rucksacks, haversacks, music cases, bags (envelopes, pouches) of leather for packaging; backpacks; boxes of vulcanised fibre; cases of leather or of leatherboard; frames for parasols; garment bags for travel; handbags; key cases [leatherware]; pocket wallets; purses; purses not of precious metal; school satchels; sling bags for carrying infants; suitcases; travelling sets [leatherware]; vanity cases [not fitted]. Furniture, namely: sofa, chairs, recliners, tables, desks, lamps, mirrors, buffets, pictures, bookshelves; picture frames; goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely: decorative boxes and pills boxes, cutlery handles not made of metal, tops, lids and stoppers not made of metal, coasters made of plastics or cork, napkin rings not made of metal, jewellery and eyeglass frames; photo-frames; mirror frames; combs; comb handles; babies' pacifiers; fans, pillows, curtain rings, chests not of metal, cupboards, benches (furniture), table trays/tops, folding screens (furniture), frames, wooden or plastic boxes/cases, chests for toys, beds, head-rests (furniture), trolleys (furniture), bottle racks; brushes, namely clothes brushes, nail brushes; baskets

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not of metal, cushions, mattresses, drawer chests, bamboo curtains, cradles, divans, shelves, mirrors, display racks, filing cabinets, garment covers [storage]; bed and furniture covers, hammocks, flower-stands [furniture], jewellery cases [caskets] not of precious metals, dressmaker's dummies, tables; works of art, of wood, wax plaster or plastic, namely: sculptures, statues, bibelots, paints, boxes, vases; umbrella stands, playpens for babies, dress and hat hangers, coat hangers, sleeping bags for camping, chairs (seats), sofas, footstools for children, embroidery frames, high chairs for babies/children, deck chairs. Household or kitchen utensils and containers (not of precious metal nor coated therewith); combs and sponges, namely: bath sponges, sponges for applying body powder, scouring sponges, combs and sponges for the toilet and grooming of pets and horses; brushes (except paint brushes), namely: toilet brushes, hair brushes, shaving brushes, brushes for pets, brushes for footwear, toothbrushes, powder brushes for makeup; brush-making materials, namely: brush shafts and bristle, natural wild oar hair, plastic fibre and filaments for use in tooth brushes; articles for cleaning purposes, namely: cleaning rags, packing-cloth, cleaning cotton, cleaning pads; steelwool; unworked or semi-worked glass (except glass used in building); beverage, crockery, china and decorative glassware, porcelain and earthenware; bottle openers, oil cruets, cocktail stirrers, candle extinguishers, non-electric make-up removing appliances, namely: wipes, napkins and cloths; cotton swabs; sugar bowls, trays, baby baths (portable), cloth for washing floors and kitchen, glass bowls, tea balls, boxes for sweetmeats; bottles, namely: baby bottles, hot water bottles, ink bottles, oil bottles, perfume bottles, vacuum bottles, water bottles; shaving brushes, pottery, coffeepots; boxes, namely: metal boxes, music boxes, metal tool boxes, glass boxes, lunch boxes, metal cash boxes, mail boxes, pill boxes, decorative boxes, jewellery boxes; non-electric heaters for feeding bottles, shoe horns, candle sticks/candelabras, wine-tasters' pipettes, fly catchers, epergnes/table center pieces, brushes for footwear; baskets, namely: flower baskets, picnic baskets, sewing baskets, wastepaper basket; water and air strainers, trouser hangers (stretchers), ice buckets, tie presses, door handles of porcelain, comb cases, ironing board covers, gardening gloves, gloves for household purposes, polishing gloves, shoe trees (stretchers), piggy banks not of metal, soap boxes, decanters, bird cages, butter dishes; toilet kits, namely: sets containing toilet utensils and articles, namely: hair brushes, combs and sponges, soaps, Cologne water, mirror, nail-file, nail-scissors sold as a whole; works of art of porcelain, terracotta or glass, namely: vases, decorative plates, statues, sculptures, boxes, bibelots, decorative frames; toothpick holders, carpet beaters, bread bins, dusting cloths (rags), pepper pots, clothes-pegs and drying racks for washing, plates, dusters, powder boxes (compacts), shaving brush stands, sponge holders, toilet paper holders, trouser presses, perfume sprayers and vaporizers, graters, crumb trays, bottle coasters, plate coasters/trivets, boot jacks, salt cellars, clothes racks for drying, coffee and tea services, napkin rings, washing boards, ironing boards, bread boards, cutting boards for the kitchen, cups, shirt stretchers, shoe stretchers, teapots, flower pots; toilet utensils, namely: combs and sponges, nail-file, nail-scissors, pumice stones; tableware other than knives, forks and spoons, namely: plates, glasses, dishes, trays; drinking glasses, cruets (vinegar). Ropes, string, nets, tents, awnings, sails, sacks; bags, namely: bags for washing hosiery, laundry bags, multi-purpose bags, cloth bags, garbage bags, plastic good storage bags, vacuum cleaner bags; padding and stuffing materials (except of rubber or plastics), namely: feathers, polyester fibres; raw fibrous textile materials, namely: silk, wool, cotton and linen; bottle envelopes of straw; eiderdown; hammocks; tarpaulins. Textiles and textile goods, namely: table covers, pocket and handkerchiefs, kerchiefs, fabrics for textile use and towels; bed and table linen; curtain holders of textile material, banners, flags (not of paper), table runners, bedspreads, textile or plastic curtains, eiderdown coverlets [down coverlets], cloth labels, linings (textile), mattress covers, loose covers for furniture, covers for cushions, washing mitts, oilcloth for use as tablecloths, bed blankets, travelling rugs [lap robes], table cloths not of paper, mosquito nets, handkerchiefs of textile, blinds of textile, bath linen (except clothing); household linen, namely: dish cloths, dusters; textile sheets, sleeping bags [sheeting], coasters [table linen], textile napkins, billiard cloth, wall hangings of textile, traced cloth for embroidery, cloth towel, polishing cloth, glass cloth, furniture cloths, towels of textile, face towels of textile, napkin for removing make-up [cloth], net curtains. Clothing for women, men and children, namely: athletic clothing, baby clothing, belts, bullet-proof clothing, business clothing, casual clothing, children's clothing, dress clothing, fire retardant clothing, infant clothing, jackets, outdoor winter clothing, sports clothing, sun protective clothing, underwear, lingerie; footwear (except orthopaedic), namely: athletic footwear, beach footwear, bridal footwear, casual footwear, children's footwear, evening footwear, exercise footwear, fire protective footwear, footwear cushioning, golf footwear, infant footwear, medical personnel footwear, outdoor winter footwear, rain footwear, ski

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

#### **SERVICES :**

(1) Advertising services namely: distribution of advertising and commercial brochures and leaflets, directly or by mail; database marketing services, in the form of compiling customer specific databases for marketing purposes and consulting, designing, printing, and collecting marketing information; promoting the sale of goods through the issuance, distribution and sale of gift cards and fidelity cards; advertising agency services; licensing of advertising slogans; distribution of samples; business management services; business administration services; office functions, namely: secretarial and clerical services, business planning, business relocation and preparation of business reports, provision of business information, computerised business information storage and retrieval, computerised data processing and data base management and organisation of art exhibitions, automobile trade show exhibitions, craft trade show exhibitions, fashion trade show exhibitions, clothing trade show exhibitions, and jewellery trade show exhibition for commercial and advertising purposes; shop-window dressing; demonstration of goods for others at trade shows, in-store demonstrations and exhibitions by showing and displaying the goods and their uses and benefits; publication of publicity texts, organization of trade fairs for commercial and advertising purposes, namely: automobile trade fairs, craft trade fairs, fashion trade fairs, clothing trade fairs, and jewellery trade fairs, for commercial and advertising purposes; sales promotions for others, namely: promoting goods and services by arranging for sponsors to affiliate goods and services with film premieres, charity shows, horse riding, sailing, golf, by organising charity shows, and organising learning programs to promote the quality of education of an university or a high school, by preparing and placing advertising in an electronic magazine accessed through a global computer

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network, and through the distribution of discount cards; franchising business management assistance; management assistance to a business handling orders through global communication networks, credit and shopping card business management assistance, modelling services for advertising or sale promotion purposes, promoting shopping centres for others through the distribution of printed material and promotional contests; retail sales in stores, by mail-order selling, and through the Web of clothing, clothing accessories, footwear, leather wares, underwear, home wear, perfumery, furniture, cds, dvds, stationery, household linen, carpets, home accessories, household utensils; public auctioneering ; retail store, computerized online retail, and catalogue services in the fields of house wares, furniture, home furnishings, glassware, tableware, gifts, household linens, dinnerware, cookware, clothing, clothing accessories, beauty and personal care products, leather goods, luggage and bags.

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

#### **REVENDICATION :**

Priority Filing Date: March 17, 2003, Country: SPAIN, Application No: 2531471 M8 in association with the same kind of wares (1) and in association with the same kind of services (1).  
Used in SPAIN on wares (1) and on services (1).  
Registered in or for SPAIN on September 03, 2003 under No. 2531471 on wares (1) and on services (1).  
Proposed Use in CANADA on wares (2) and on services (2).

#### **MARQUES LIÉES :**

TMA513,706 TMA526,538 TMA526,805 TMA531,098 TMA534,585  
TMA546,483 TMA557,205 TMA747,356 TMA839,945 1,020,931  
1,028,780 1,215,860 1,478,638 1,493,680 1,522,904  
1,522,906 1,522,907 1,544,442 1,544,447 1,544,448  
1,544,449 1,544,450



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**Information sur les actions**

<b>ACTION</b>	<b>DATE</b>	<b>BF</b>	<b>COMMENTAIRES</b>
Produite	2003-09-17		
Créée	2003-10-02		
Formalisée	2003-10-06		
Recherche enregistrée	2004-04-06		
Premier rapport de l'examineur	2004-04-06	2004-08-06	
Prolongation de délai	2004-08-09	2005-02-06	Request Letter Date: 2004/08/02
Prolongation de délai	2005-02-08	2005-08-06	Request Letter Date: 2005/01/31
Prolongation de délai	2005-08-16	2006-02-06	Request Letter Date: 2005/08/05
Prolongation de délai	2006-02-09	2006-08-06	Request Letter Date: 2006/02/02
Prolongation de délai	2006-08-17	2007-02-06	Request Letter Date: 2006/07/28
Prolongation de délai	2007-02-09	2007-08-06	Request Letter Date: 2007/02/05
Prolongation de délai	2007-09-28	2008-02-06	Request Letter Date: 2007/08/06
Prolongation de délai	2008-02-14	2008-08-06	Request Letter Date: 2008/01/31
Prolongation de délai	2008-08-26	2009-02-06	Request Letter Date: 2008/07/31
Prolongation de délai	2009-02-09	2009-08-06	Request Letter Date: 2009/02/04
Prolongation de délai	2009-08-11	2010-02-06	Request Letter Date: 2009/07/31
Prolongation de délai	2010-02-17	2010-08-06	Request Letter Date: 2010/02/05
Correspondance créée	2010-09-16	2011-03-16	
Correspondance créée	2011-04-19	2011-10-19	
Avis d'approbation envoyé	2011-10-05	2011-11-02	
Note au dossier	2011-10-27		As per letter of 2011/10/25 correction made to services (1): added "for commercial and advertising purposes". APPROVED BY PROGRAM EX200M1 Vol.58 Issue 2981 2011/12/14
Approuvée	2011-11-24		
Extrait pour publication	2011-12-09		
Publiée	2011-12-14		Vol.58 Issue 2981
Opposition projetée	2012-01-27		Proposed Opposition Filed by receiving mail.
En opposition	2012-01-27		Opposition Created by filing a statement of Opposition.

**ACTION D'OPPOSITION****CAS #1 : Zainab Ansell and Roger Ansell, a - Actif**

ÉTAPES / ACTIONS	DATE	BF
<b>DÉCLARATION D'OPPOSITION</b>		
Déclaration d'opposition déposée	2012-01-23	
Droits relatifs à la déclaration d'opposition reçus	2012-01-23	
Déclaration d'opposition transmise à des fins d'examen	2012-01-27	
Déclaration d'opposition envoyée au requérant	2012-03-08	2012-05-08
<b>CONTRE-DÉCLARATION</b>		
Contre-déclaration déposée par le requérant	2012-03-27	
Contre-déclaration signifiée à l'opposant	2012-03-27	2012-07-27
Correspondance produite	2012-07-11	
<b>MOTION INTERLOCUTOIRE</b>		
Motion interlocutoire reçue	2012-03-27	
Correspondance produite	2012-04-18	2012-05-09
Correspondance produite	2012-08-28	
<b>PREUVE - OPPOSANT</b>		
Preuve déposée par l'opposant	2012-07-27	
Preuve signifiée au requérant	2012-07-27	2012-11-27
<b>PREUVE - REQUÉRANT</b>		
Déclaration signifiée - Aucune preuve par le requérant	2012-09-24	2012-10-11
Déclaration déposée - Aucune preuve par le requérant	2012-09-24	
<b>PLAIDOYERS ÉCRITS</b>		
Plaidoyers écrits demandés - Requérant	2012-12-07	2013-01-07
Plaidoyers écrits demandés - Opposant	2012-12-07	2013-01-07
Plaidoyers écrits déposés par le requérant	2012-12-14	
Plaidoyers écrits déposés par l'opposant	2013-01-07	
Correspondance produite	2013-02-26	
Plaidoyers écrits échangés	2013-02-26	2013-03-26
<b>APPLICATION MODIFIÉE</b>		
Modifications aux marchandises / Services reçues	2012-03-29	
Demande modifiée	2012-04-18	
Correspondance produite	2012-04-18	
<b>AUDIENCE</b>		
Demande d'audience par l'opposant	2013-03-14	
Demande d'audience par le requérant	2013-03-20	
Audience fixée	2013-03-28	

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Requérant présent à l'audience 2013-04-16  
Correspondance produite 2013-04-24

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**CAS #2 : Watson Pharmaceuticals, Inc - Actif**

ÉTAPES / ACTIONS	DATE	BF
<b>DÉCLARATION D'OPPOSITION</b>		
Prolongation de délai accordée à l'opposant	2012-02-14	
Déclaration d'opposition déposée	2012-05-22	
Droits relatifs à la déclaration d'opposition reçus	2012-05-22	
Correspondance produite	2012-05-29	2012-06-12
Déclaration d'opposition transmise à des fins d'examen	2012-06-13	
Correspondance produite	2012-08-27	2012-09-17
Correspondance produite	2012-10-11	
Correspondance produite	2013-02-20	
Déclaration d'opposition envoyée au requérant	2013-02-26	2013-04-26
<b>CONTRE-DÉCLARATION</b>		
Date limite pour déposer une contre-déclaration	2013-04-26	
<b>APPLICATION MODIFIÉE</b>		
Modifications aux marchandises / Services reçues	2012-03-29	
Demande modifiée	2012-04-18	
Correspondance produite	2012-04-18	



Dernière mise-à-jour :  
2012-03-26

**COUR FÉDÉRALE**

**AVOCATS INSCRITS AU DOSSIER**

**DOSSIER :** T-468-15

**INTITULÉ :** INDUSTRIA DE DISEÑO TEXTIL, S.A. c ZARA  
NATURAL STONES INC.

**LIEU DE L'AUDIENCE :** OTTAWA (ONTARIO)

**DATE DE L'AUDIENCE :** LE 6 MARS 2019

**JUGEMENT ET MOTIFS :** LA JUGE ST-LOUIS

**DATE DU JUGEMENT  
ET DES MOTIFS :** LE 22 AOÛT 2019

**COMPARUTIONS :**

Catherine Bergeron POUR LA DEMANDERESSE

Adams Michael POUR LA DÉFENDERESSE

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Avocats  
Toronto (Ontario)