

REFUS PROVISOIRE TOTAL DE PROTECTION

notifie au Bureau International de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) selon la règle 17(1) du Règlement d'Exécution Commun a l'Arrangement de Madrid concernant l'enregistrement international des marques et au Protocole relatif à cet Arrangement

I. OFFICE QUI FAIT LA NOTIFICATION : Agence d'Etat pour la Propriété Intellectuelle (AGEPI), rue Andrei Doga, no. 24 / 1, MD-2024 Chişinău, République de Moldova		Téléphone : (37322) 400 - 541 fax.: (37322) 44-01-19
II. NO DE L'ENREGISTREMENT INTERNATIONAL FAISANT L'OBJET DU REFUS: 1453355		
III. NOM ET ADRESSE DU TITULAIRE DE L'ENREGISTREMENT INTERNATIONAL FAISANT L'OBJET DU REFUS : Shantou Chenghai Longjun Toy Factory, No. 4, East National Road, Zhulin Village, Lianshang Town, Chenghai District, Shantou City Guangdong, Chine		
IV. INFORMATIONS CONCERNANT LE TYPE DE REFUS PROVISOIRE: ☒ Refus provisoire total fondé sur une observation/opposition i) Nom de l'opposant : LEGO Juris A/S ii) Adresse de l'opposant : 7190 BILLUND, Danemark		
V. INFORMATIONS CONCERNANT LA PORTÉE DU REFUS PROVISOIRE: Le refus provisoire total concerne tous les produits et services.		
VI. MOTIFS DE REFUS [(le cas échéant, voir la rubrique VII)] : ☒ Observation/Opposition no. 4430 du 22.08.2019 (La Loi no.38-XVI/2008 sur la protection des marques de la République de Moldova, Art. 40(1), 79(2), Règle 17(3) du Règlement d'exécution de l'Arrangement et du Protocole de Madrid).		
VII. DISPOSITIONS ESSENTIELLES CORRESPONDANTES DE LA LÉGISLATION APPLICABLE : Loi no.38-XVI/2008 sur la protection des marques de la République de Moldova (extrait) Article 40. Opposition (1) Pendant trois mois a compter de la date de publication de la demande d'enregistrement de la marque, toute personne intéressée, peut former une opposition		

a l'enregistrement de la marque sur le motif que l'enregistrement de celle-ci devrait être refusé conformément à l'art. 8 et/ou à l'art. 7, selon le cas. Article 79. Procédure d'examen de l'enregistrement international notifié par le Bureau International (2) Par dérogation de l'article 39 l'alinéa (1) et de l'article 40 l'alinéa (1), l'observation et l'opposition contre un enregistrement international peut être formée dans un délai de six mois à compter de la date de publication officielle par le Bureau International de l'information relative à l'extension des effets de cet enregistrement international dans la République de Moldova. Règle 17(3) du Règlement d'exécution de l'Arrangement et du Protocole de Madrid

VIII. INFORMATIONS CONCERNANT LA POSSIBILITÉ DE PRÉSENTER LE POINT DE VUE DU DEMANDEUR :

- i) Le demandeur, pendant **deux mois** après la date de notification, pourra exposer son point de vue. Lorsque le demandeur ne présente pas son opinion dans le délai mentionné, les observation/oppositions seront examinées en vertu des matériaux existants.
- ii) Autorité auprès de laquelle la requête en réexamen ou le recours doit être déposé : **Agence d'Etat pour la Propriété Intellectuelle (AGEPI)**, (voir rubrique I ci-dessus)
- iii) Le point de vue du demandeur doit être présenté dans la **langue officielle** de la République de Moldova; assistance d'un mandataire local (art.29(2), (3) de la Loi No. 38/2008) ou d'une personne affiliée ou un représentant de celui-ci (art.29(2¹) de la Loi No. 38/2008) **obligatoire**.
- iv) Le point de vue du demandeur **ne fait pas l'objet des conditions de forme et n'est soumis à aucune taxe légale.**

IX. INFORMATIONS RELATIVES AUX PROCEDURES DEVANS L'OFFICE:

Après la réception du point de vue du demandeur, mais pas plus tard d'un année de la date de notification du présent enregistrement international par le Bureau International, l'Agence d'Etat pour la Propriété Intellectuelle (AGEPI) va examiner:

- a) s'il n'y a pas de motifs absolus de refus prévus à l'article 7;
- b) s'il n'y a pas de motifs relatifs de refus prévus à l'article 8;
- c) les observations et les oppositions formées sur la demande d'enregistrement de la marque.

En dépendance des résultats de l'examen de fond, AGEPI va notifier au Bureau International :

- un nouveau refus provisoire, s'il va considérer les motifs invoqués dans l'observation/opposition comme fondés ou s'il va trouver autres motifs de refus ou,
- une décision d'enregistrer la marque, s'il va considérer les motifs invoqués dans l'observation/opposition comme non-fondés et s'il ne va pas trouver autres motifs de refus.

X. SIGNATURE OU SCEAU OFFICIEL DE L'OFFICE QUI FAIT LA NOTIFICATION :



XI. DATE D'ENVOI DE LA NOTIFICATION AU BUREAU INTERNATIONAL : 2019.09.06

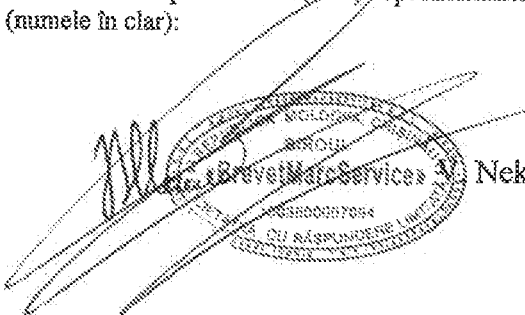
Referința
opozantului/reprezentantului:
Nr. TM-8341
Data 22.08.2019

Se completează de către AGEPI	
Registratura AGEPI intrare:	
Nr.	4430
Data	2019.08.22

Către **AGENȚIA DE STAT PENTRU PROPRIETATEA INTELECTUALĂ
A REPUBLICII MOLDOVA**
Str. Andrei Doga nr. 24, bloc 1, MD - 2024, Chișinău, Republica Moldova, tel.: (37322) 40-05-05, fax: 43-85-08

CERERE DE EXAMINARE A OPOZIȚIEI împotriva înregistrării mărcii

Cererea se va completa în 2 exemplare dactilografiate sau imprimare

I. OPOZANT (nume, prenume sau denumire completă, adresă, telefon și fax cu prefixul zonei, e-mail) LEGO Juris A/S 7190 BILLUND, Danemarca ☐ opozanți multipli (anexă) ☒ persoană juridică ☐ persoană fizică			Numărul de identificare de stat unic (IDNO/IDNP) Cod țară conform normei ST. 3 OMPI DK		
II. (740) REPREZENTANT (nume, prenume, adresă, telefon și fax cu prefixul zonei, e-mail) Valentin Nekliudov (Reg. Nr. 91), Biroul «BrevetMarcService»; str. Miron Costin 15/2, of. 20, MD-2045 mun. Chișinău, Republica Moldova tel. (373-22) 44-96-45, fax: (373-22) 44-62-57 ☒ mandatar autorizat ☐ altă persoană					
III. (750) ADRESA PENTRU CORESPONDENȚĂ (nume, prenume, adresă, telefon și fax cu prefixul zonei, e-mail)) Biroul BrevetMarcService, c/p 1709, MD-2045, mun. Chișinău, Republica Moldova					
IV. SOLICIT în baza Legii 38/2008, art. 40(1), examinarea opoziției cu privire la cererea de înregistrare a mărcii cu: (210) Nr. depozit: IR 1453355 (730) Solicitant: Shantou Chenghai Longjun Toy Factory (220) Data depozit: (442) Nr. BOPI:					
V. DOCUMENTE DEPUSE LA AGEPI DE OPOZANT(II)/REPREZENTANT:					
Documente	Nr. file	Nr. ex.	Documente	Nr. file	Nr. ex.
☒ - formular de cerere	1	3	alte documente: ☐ ☐ ☐		
☒ - opoziție	7	3			
☒ - procură	1	1			
☒ - dovada de plată a taxei	1	2			
☒ - pagini suplimentare	78	2			
VI. Semnătura opozantului (ilor)/reprezentantului (numele în clar):  Nekliudov			VII. a) Persoana care a prezentat cererea, alta decât opozantul/ reprezentantul (numele complet și actul de identitate): b) Semnătura persoanei care a recepționat cererea la AGEPI (numele în clar): VIII. Registratura AGEPI ieșire:  Nr. Data		
Data 22.08.2019					

AGEPI
Direcția Mărci și Design Industrial

Opoziție

împotriva înregistrării în Moldova a mărcii  IR 1453355,
solicitant Shantou Chenghai Longjun Toy Factory

În baza Art. 40 din Legea nr. 38/2008 privind protecția mărcilor, compania LEGO

Juris A/S contestă împotriva admiterii la protecție în Moldova a mărcii  IR 1453355, solicitant Shantou Chenghai Longjun Toy Factory, pentru toate produsele revendicate din clasa 28 CIPS, argumentele fiind următoarele.

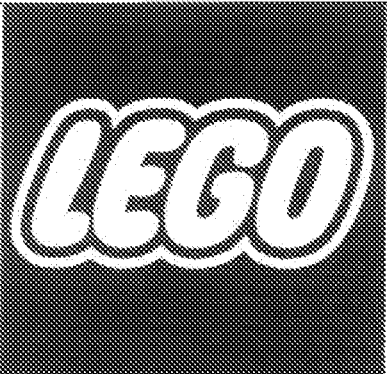
Compania LEGO Juris A/S este titular al mărcii nr. 2R 495  cu data de depozit 02.07.1994 și cu data de prioritate 01.02.1977 pentru produsele din clasa 28 CIPS „jocuri, jucării, articole de gimnastică și de sport (cu excepția îmbrăcăminte), podoabe pentru pomul de iarnă”.

Marca  IR 1453355 din 23.11.2018 prezintă similitudine susceptibilă de a

produce confuzie cu marca anterioară nr. 2R 495  și este solicitată spre înregistrare pentru produse identice din clasa 28 CIPS.

Desemnările  și  vizual sunt asemănătoare din următoarele considerente.

Aceste mărci au aspectul următor.

Marca IR 1453355	Marca verbală nr. 2R 495
	

Cum se poate remarca din tabelul cu imagini, aceste mărci conceptual sunt destul de asemănătoare.

Ambele mărci reprezintă pătrate pe fundalul cărora sunt amplasate desemnări, care reprezintă sau imită ieroglife, cu cuvântul „LEPIN” și, respectiv, cu cuvântul „LEGO”.

Elementele verbale „LEPIN” și „LEGO” sunt înscrise cu caractere similare nestandard.

Literele acestor elemente verbale sunt realizate de culoare albă cu contur negru.

Elementele verbale «LEPIN» și «LEGO» sunt constituite dintr-un număr asemănător de litere, 5 și 4, respectiv, primele două litere fiind similare – «L» și «E».



În pofida faptului, că marca  are în componența sa desemnări, care reprezintă sau care imită ieroglife, la o privire fugitivă asupra mărcilor  și  și la o citire ulterioară consumatorul autohton le poate asocia una cu cealaltă.

O posibilă asociere se datorează faptului, că atenția consumatorului autohton se va concentra nu pe hieroglifele necunoscute lui, ci pe cuvintele scrise cu litere latine, cunoscute lui.

La o citire destul de fluentă a elementelor verbale „LEPIN” și „LEGO”, în care primele două litere sunt asemănătoare, percepția mărcilor  și  ca fiind similare poate doar să crească.



Astfel, marca  IR 1453355 prezintă similitudine cu marca anterioară nr.



2R 495 , solicitată spre înregistrare în Republica Moldova pentru produse identice din clasa 28 CIPS, și există riscul de confundare, inclusiv riscul de asociere a



mărcii  cu marca anterioară



Riscul confundării mărcii  cu marca anterioară , incluzând riscul de asociere, crește semnificativ, reieșind din popularitatea și reputația produselor companiei LEGO Juris A/S.

Compania LEGO Juris A/S produce jucării educaționale, care reprezintă seturi de piese pentru asamblarea și modelarea unei varietăți de obiecte.

Produsul principal al companiei LEGO Juris A/S reprezintă cărămizi din plastic multicolore, figuri mici, etc. Ele pot fi folosite pentru a asambla așa obiecte, cum ar fi vehicule, clădiri, roboți în mișcare și multe altele. Tot ceea ce este construit poate fi apoi dezasamblat și detaliile pot fi folosite pentru a crea alte obiecte. Mai multe informații despre compania LEGO Juris A/S se conține în Declarația, întocmită de persoana împuternicită a companiei și legalizată notarial. (Anexa 1).

Producția companiei LEGO Juris A/S, și anume, diverse jucării și constructori



jucării, este marcată cu desemnarea



2R 495. În Anexa 2 se conțin imaginile ale câteva tipuri de produse ale companiei LEGO Juris A/S.

De-a lungul anilor produsele companiei LEGO Juris A/S, marcate cu desemnarea



, au devenit foarte cunoscute și populare în rândul consumatorilor de vârste complet diferite din întreaga lume. Această desemnare se asociază cu piese pentru asamblarea diferitelor obiecte, cu constructorii, care sunt fabricați de compania LEGO Juris A/S.



Producția companiei LEGO Juris A/S cu marca este prezentă pe piața din Republica Moldova cel puțin din a. 2003. Informația cu privire la prezența pe piață și volumele de vânzări în perioada din a. 2014 până în a. 2017 se conține în Declarația anexată.



Astfel, producția cu marca a companiei LEGO Juris A/S este prezentă pe piața din Republica Moldova deja de mai mult timp, perioadă în care ea a dobândit renume și popularitate printre consumatorii autohtoni.



Desemnarea a dobândit în caracter distinctiv marcant pentru produsele din clasa 28 CIPS.

Consumatorul, numai văzând oarecare jucării sau constructori jucării cu această desemnare, le asociază cu producția companiei LEGO Juris A/S și așteaptă să primească o calitate înaltă a produsului.

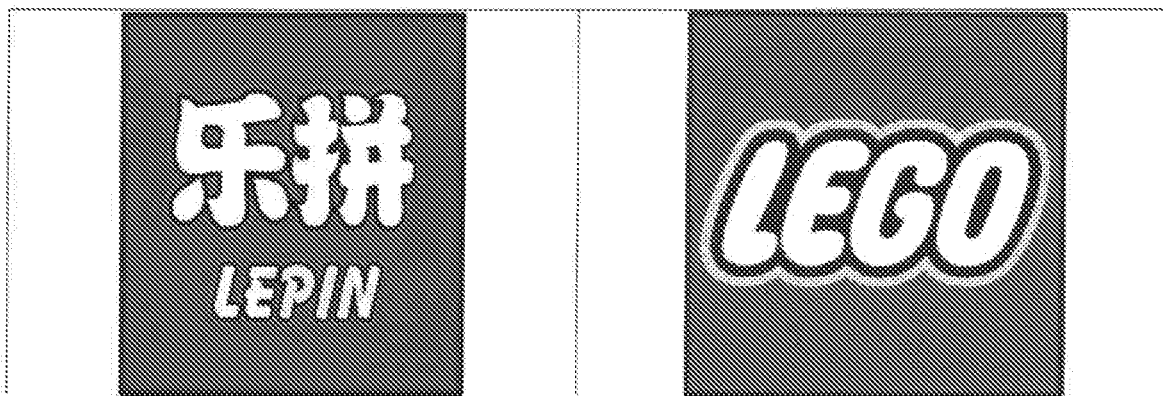
În acest caz este necesar de a realiza o analiză comparativă repetată a mărcii



IR 1453355 și desemnării



nr. 2R 495



Cum se poate remarca din tabelul prezentat, gradul de similitudine al acestor desemnări crește, comparativ cu ceea ce a fost descris anterior în cadrul determinării

asemănării desemnărilor  și .

Ambele desemnări reprezintă pătrate de culoare roșie, iar literele în cuvintele «LEPIN» și «LEGO» sunt înscrise cu culoare albă cu un contur negru, precum și cu un contur de culoare oranj și galbenă, respectiv, care sunt culori destul de asemănătoare.

Solicitantul Shantou Chenghai Longjun Toy Factory intenționează să obțină

protecție juridică pentru marca sa  pentru importul și realizarea legală a produselor sale în Moldova.

Această marcă este conceptual similară până la gradul de confundare cu marca

anterioară nr. 2R 495  și varianta ei colorată .

Astfel, solicitantul Shantou Chenghai Longjun Toy Factory dorește să obțină un beneficiu nelegitim, folosind caracterul distinctiv înalt, popularitatea și reputația mărcilor

 și .

Consumatorul, asociind produsele cu marca  cu produsele companiei LEGO Juris A/S, le poate achiziționa fără a primi un nivel înalt de calitate, care el îl aștepta.

Drept urmare, consumatorul și compania LEGO Juris A/S vor suferi pierderi materiale, iar compania LEGO Juris A/S va suferi, de asemenea, și daune reputaționale.

În calitate de exemplu de practică internațională într-un caz practic similar, compania LEGO Juris A/S expediază decizia de anulare a înregistrării mărcii



în Regatul Unit.

Această decizie a fost emisă în baza rezultatelor examinării cererii companiei



LEGO Juris A/S privind anularea înregistrării mărcii în baza coliziunii cu marca



anterioară

De asemenea, este necesar de atras atenție asupra următorului fapt, menționat în această decizie.

Solicitantul Shantou Chenghai Longjun Toy Factory copiază produsele companiei

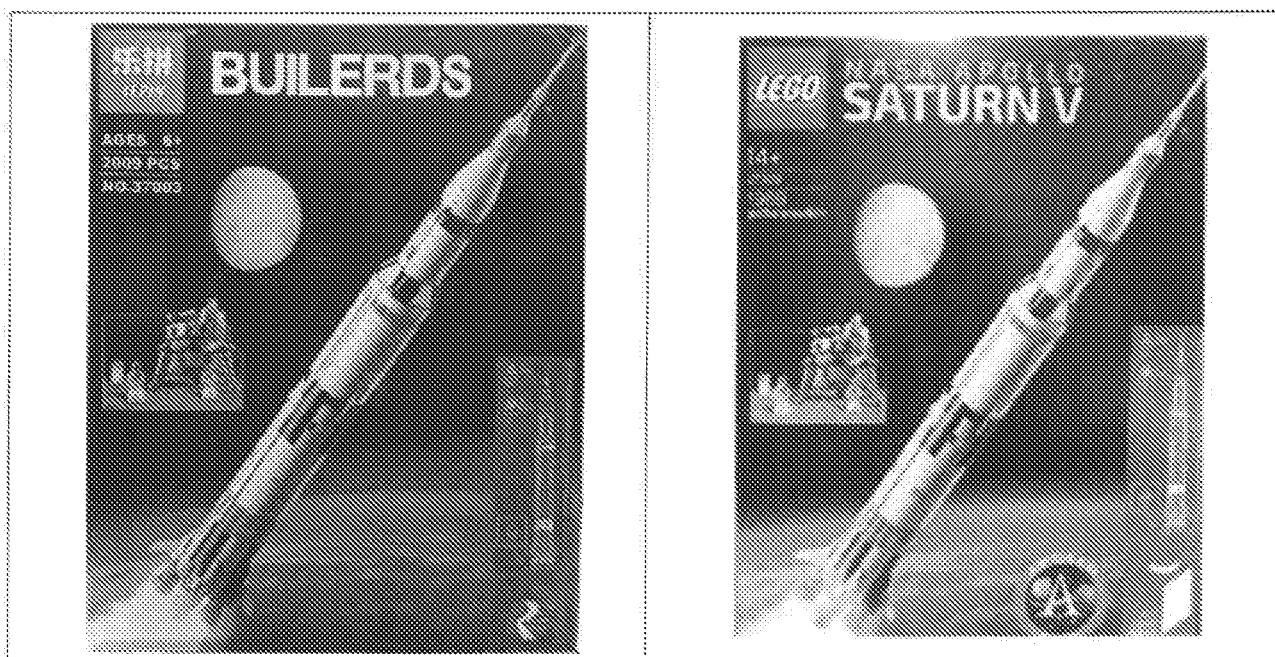


LEGO Juris A/S, ambalajul lor, plasează pe ele marca sa și apoi le realizează pe piața din Regatul Unit.

În continuare este prezentat tabelul cu câteva exemple de produse ale Shantou Chenghai Longjun Toy Factory și ale companiei LEGO Juris A/S.

Un număr mare de asemenea exemple de comparație a produselor Shantou Chenghai Longjun Toy Factory și ale companiei LEGO Juris A/S se conține în decizia înseși. Anexa 3 conține această decizie cu traducere selectivă în limba de stat.

Produse ale Shantou Chenghai Longjun Toy	Produse ale companiei LEGO Juris A/S
	



Cum se poate remarca, solicitantul Shantou Chenghai Longjun Toy Factory copiază produsele companiei LEGO Juris A/S, practic completamente copiază



ambalajul lor, plasează pe ele marca sa conceptual asemănătoare cu marca



În rezultatul unor asemenea acțiuni solicitantul Shantou Chenghai Longjun Toy Factory folosește reputația și atractibilitatea produselor companiei LEGO Juris A/S, pentru a acorda atractibilitate produselor sale și pentru a dobândi un beneficiu nejustificat.

Compania LEGO Juris A/S și-a dezvoltat afacerea timp de câteva decenii, a elaborat și a extins sortimentul de produse, a menținut și a îmbunătățit calitatea produselor, a investit fonduri, inclusiv în publicitate și în promovarea produselor, drept rezultat dobândind o reputație înaltă și popularitate în rândul consumatorilor din întreaga lume, inclusiv și din Moldova.

Solicitantul Shantou Chenghai Longjun Factory Factory folosește pur și simplu rezultatele activității companiei LEGO Juris A/S, neavând permisiune pentru aceasta și fără a oferi vre-o compensație.

Această situație se poate repeta și în Moldova, deoarece pe piața din Moldova deja sunt prezente produsele solicitantului Shantou Chenghai Longjun Toy Factory. Anexa 4 conține copii de pe internet cu informații despre oferta de vânzare a acestor produse în Moldova.

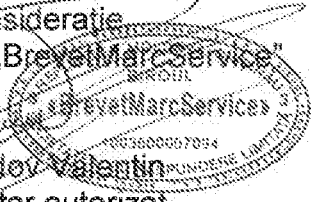
În contextul argumentelor expuse, în conformitate cu art. 8(1)b) din Legea nr. 38/2008 privind protecția mărcilor, compania LEGO Juris A/S solicită respingerea la

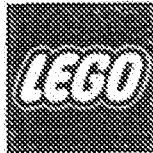


Înregistrare a mărcii IR 1453355, solicitant Shantou Chenghai Longjun Toy Factory, pentru toate produsele revendicate din clasa 28 CIPS.

Cu considerație
Biroul „Brevet Marc Service”


Nekliudov Valentin
mandatar autorizat





Anesca 1

DECLARATION

I, the undersigned, Peter Kjær of LEGO Juris A/S, do solemnly and sincerely declare as follows:

A. INTRODUCTION

1. I am VP, General Counsel of LEGO Juris A/S ("LEGO"), located at DK-7190 Billund, Denmark. I am responsible for the trade marks of LEGO and its affiliated companies worldwide.
2. I am fully authorized to make this Declaration on behalf of LEGO. I am in a position to give information concerning the trade marks of LEGO and its affiliated companies and their use throughout the world. The facts set forth in this Declaration are within my own personal knowledge or are derived from LEGO's records to which I have full access.
3. LEGO and its affiliates are the proprietors of the LEGO trade mark ("LEGO") used throughout the world.
4. LEGO was founded in 1932 by Ole Kirk Kristiansen. It has come a long way over 80 years – from a small carpenter's workshop to a modern, global enterprise that is now, in terms of sales, one of the world's largest manufacturer of toys.
5. Through almost a century, the LEGO Group has grown from being a small local company into being one of the world's leading suppliers of creative play and learning materials. LEGO has over 19.000 employees of more than 80 nationalities, and more than 130 Brand Retail Stores worldwide. Approximately 75 billion LEGO elements per year are sold in more than 140 countries. In 2017, LEGO's revenue was 34.995 million DKK, with a net profit of 7.806 million DKK. Enclosed as Annex A is the LEGO Group Annual Report 2017.

B. RECOGNITION AMONGST CONSUMERS/BUSINESSES IN DISTRIBUTION CHANNEL

6. LEGO has been widely used and recognized all over the world. LEGO has been recognized as a well-known trademark in i.a. Denmark, the United Kingdom, Germany, France, the Netherlands, Czech Republic, Romania, Russia, Poland, Spain, Turkey, Costa Rica, Ecuador, Slovenia, Slovakia, Portugal, Lithuania, Taiwan, Japan, Republic of Korea, Thailand, Chile, Peru, Taiwan, Philippines, Israel, Syria, Lebanon, and in WIPO UDRP decision re the domain names <legoracers.com>, <legoclub.com>, <legosystems.com>, <legosystem.com>, <legosysems.com>, <legos.com> and <legotable.com>. Enclosed as Annex B are samples of documents evidencing this fact.

All the decisions in Annex B are true copies of the original documents. All translations in Annex B are, to the best of my knowledge and belief, correct translations of the original decisions or of extracts of the original decisions.

C. DURATION, EXTENT AND GEOGRAPHICAL AREA OF USE

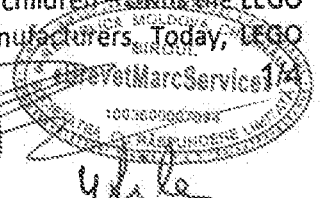
7. The founder, Ole Kirk Kristiansen began making wooden toys in 1932 and created the LEGO name in 1934. Today the founder's grandson, Kjeld Kirk Kristiansen – with his children – owns the LEGO Group, which in terms of sales is one of the world's largest toy manufacturers. Today, LEGO

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Mandatar Autorizat

V. Neklin

M. Neklin

4 file





products are on sale in more than 140 countries. The world's children spend 5 billion hours a year playing with LEGO bricks.

LEGO products have been sold in the Republic of Moldova at least since 2003.

DURATION, EXTENT AND GEOGRAPHICAL AREA OF LEGO PROMOTION

The annual expenditures on worldwide advertisement and promotion of the products bearing the mark LEGO in the years 2012-2017 are set out in Table 1 below:

Year	Approx. Worldwide Expenditure in Million DKK
2017	4 681
2016	5 119
2015	3 924
2014	3 552
2013	3 141
2012	2 432

E. DURATION, EXTENT AND GEOGRAPHICAL AREA OF LEGO SALES

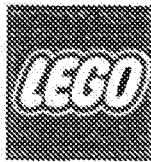
11. The fame and reputation associated with the LEGO mark can be illustrated by the worldwide sales of the products bearing the mark.

Based on the accounts and records of LEGO and its affiliates, maintained in the regular course of business, the revenue in connection with the worldwide sales of products bearing the LEGO mark in the past six years is set out in Table 3 below:

Year	Approx. Worldwide Sales in Million DKK
2017	34 995
2016	37 934
2015	35 780
2014	28 578
2013	25 382
2012	23 095

Table 3: Worldwide Revenue in connection with sale of LEGO products

The revenue in connection with the sales of products bearing the LEGO mark in the past five years in the Republic of Moldova is set out in Table 4 below:



Year	Revenue in RUB
2017	19 695 608
2016	18 543 979
2015	8 842 631
2014	203 167

Table 4: Local Sales of LEGO products in the Republic of Moldova

DURATION, EXTENT AND GEOGRAPHICAL AREA OF LEGO TRADE MARK REGISTRATIONS

LEGO was first registered by LEGO Juris A/S in Denmark on 1 May 1954 ("the first Registration"). The LEGO trade mark has since then been registered in more than 130 countries. The detailed list of worldwide registrations of LEGO trade mark is enclosed as Annex C.

LEGO IS A WELL-KNOWN MARK

3. As a result of LEGO's extensive sales, sales promotion and advertising throughout the world and the extensive registrations obtained for the LEGO trade mark, LEGO has established a worldwide reputation and substantial goodwill in the LEGO trade mark. The LEGO trade mark has become distinctive of the high standards of quality and consistency of LEGO products. The LEGO trade mark thus serves to identify and distinguish LEGO products from other electronic components and media products. Enclosed as Annex D is the 2018 RepTrak Study placing LEGO as one of the most well-known brands in Europe.

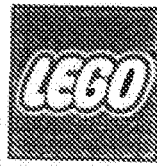
Based on the foregoing, it is apparent that LEGO has registered and used the trade mark in good faith for many years in numerous countries worldwide. The LEGO trademark therefore has come to be associated, in the mind of consumers, as belonging to LEGO and its affiliates. In other words, LEGO has become a well-known mark. Thus, it should be given the corresponding protection provided under Intellectual Property Law, without restriction to a particular class of goods.

And I declare that all of the above statements are made from my personal knowledge or on the basis of information received and are true to the best of my knowledge.

Declared at Herning, Denmark, this 27TH day of AUGUST, 2018

Signature:

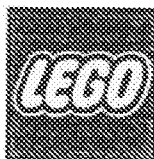
Name: Peter Kjær
Position: VP, General Counsel
LEGO Juris A/S



ures:

- LEGO Company Annual Report 2017
- Copies of documents showing "LEGO" has been recognized as well-known trademark
- List of worldwide registrations of LEGO trade marks
- 3. 2018 RepTrak Study

Notar Public
Retten și Herning



946687 01 0000.0007 29.08.2018
60200-01057/2018

DECLARAȚIE

Eu, subsemnatul, Peter Kjær al LEGO Juris A/S, declar solemn și sincer după cum urmează:

A. INTRODUCERE

1. Sunt VP, Consilier General al LEGO Juris A / S ("LEGO"), situat la adresa: DK-7190 Billund, Danemarca. Sunt responsabil pentru mărcile comerciale ale LEGO și ale companiilor afiliate din întreaga lume.
2. Sunt pe deplin autorizat să fac această declarație din numele LEGO. Sunt în măsură să furnizez informații cu privire la mărcile comerciale ale LEGO și ale companiilor afiliate și la utilizarea acestora în întreaga lume. Faptele expuse în prezenta Declarație sunt din cunoștințele mele personale sau provin din înregistrările LEGO la care am acces deplin.
3. LEGO și afiliații săi sunt proprietarii mărcii comerciale LEGO („LEGO”) utilizată în întreaga lume.
4. LEGO a fost fondată în 1932 de Ole Kirk Kristiansen. A parcurs un drum lung de peste 80 de ani - de la un atelier de dulgheri la o întreprindere modernă, globală, cum este în prezent, în ceea ce privește vânzările, unul dintre cei mai mari producători de jucării din lume.
5. Pe durata aproape a unui secol, Grupul LEGO a crescut de la o companie locală mică, devenind unul dintre cei mai importanți furnizori de jucării și materiale de învățare din lume. LEGO are peste 19.000 de angajați de peste 80 de naționalități și peste 130 de magazine de vânzare cu amănuntul în întreaga lume. Aproximativ 75 miliarde de elemente LEGO pe an sunt vândute în peste 140 de țări. În anul 2017, veniturile LEGO au fost de 34,995 milioane DKK, cu un profit net de 7,806 milioane DKK. În anexă este inclus raportul anual al grupului LEGO din 2017.

B. RECUNOAȘTEREA CONSUMATORILOR / AFACERILOR ÎN REȚEAUA DE DISTRIBUȚIE

6. LEGO a fost utilizat pe scară largă și recunoscut în întreaga lume. LEGO a fost recunoscut ca o marcă notorie în Danemarca, Regatul Unit, Germania, Franța, Țările de Jos, Republica Cehă, România, Rusia, Polonia, Spania, Turcia, Costa Rica, Ecuador, Slovenia, Slovacia, Portugalia, Portugalia, Lituania, Taiwan, Japonia, Republica Coreea, Thailanda, Chile, Peru, Taiwan, Filipine, Israel, Siria, Liban și în decizia UMPP a WIPO privind numele de domenii <legoracers.com>, <legoclub.com>, <legosystems.com>, <legosystem.com>, <legosystems.com>, <legos.com> și <legotable.com>. În Anexa B sunt atașate eșantioane ale documentelor care atestă acest fapt.

Toate deciziile din anexa B sunt copii corecte ale documentelor originale. Toate traduceri din Anexa B sunt, după cunoștințele și convingerile mele, traduceri corecte ale deciziilor originale sau ale extraselor din deciziile inițiale.



C. DURATA, EXTINDEREA ȘI ZONA GEOGRAFICĂ DE UTILIZARE

7. Fondatorul, Ole Kirk Kristiansen a început să facă jucării din lemn în 1932 și a creat numele LEGO în 1934. Astăzi nepotul fondatorului, Kjeld Kirk Kristiansen - cu copiii săi - deține LEGO Group, care în ceea ce privește vânzările este unul dintre cei mai mari producători de jucării din lume. Astăzi, produsele LEGO sunt disponibile în peste 140 de țări. Copiii din lumea întreagă petrec 5 miliarde de ore pe an jucându-se cu cărămizile LEGO.
8. Produsele LEGO sunt vândute în Republica Moldova cel puțin din 2003.

D. DURATA, EXTINDEREA ȘI ZONA GEOGRAFICĂ A PROMOVĂRII LEGO

9. Cheltuielile anuale privind publicitatea și promovarea la nivel mondial a produselor care poartă marca LEGO în perioada 2012-2017 sunt prezentate în Tabelul 1 de mai jos:

Anul	Cheltuielile aproximativ pe plan mondial în milioane DKK
2017	4 681
2016	5 119
2015	3 924
2014	3 552
2013	3 141
2012	2 432

E. DURATA, EXTINDEREA ȘI ZONA GEOGRAFICĂ A VÂNZĂRILOR LEGO

11. Faima și reputația asociate mărcii LEGO pot fi ilustrate de vânzările la nivel mondial ale produselor care poartă marca.

Pe baza conturilor și înregistrărilor LEGO și a companiilor afiliate, menținute în cursul regulat al afacerii, veniturile aferente vânzărilor la nivel mondial a produselor care poartă marca LEGO în ultimii șase ani sunt prezentate în Tabelul 3 de mai jos:

Anul	Cheltuielile aproximativ pe plan mondial în milioane DKK
2017	34 995
2016	37 934
2015	35 780
2014	28 578
2013	25 382
2012	23 095

Tabelul 3: Veniturile din întreaga lume privind vânzarea produselor LEGO



Veniturile privind vânzarea produselor care poartă marca LEGO în ultimii cinci ani în Republica Moldova sunt prezentate în Tabelul 4 de mai jos:

Anul	Venitul în RUB
2017	19 695 608
2016	18 543 979
2015	8 842 631
2014	203 167

Tabelul 4: Vânzările locale ale produselor LEGO în Republica Moldova

F. DURATA, EXTINDEREA ȘI ZONA GEOGRAFICĂ A ÎNREGISTRĂRII MĂRCII LEGO

12. LEGO a fost înregistrată pentru prima dată de LEGO Juris A / S în Danemarca la 1 mai 1954 („prima înregistrare”). Marca LEGO a fost înregistrată de atunci în peste 130 de țări. Lista detaliată a înregistrărilor din întreaga lume a mărcii LEGO este inclusă în Anexa C.

G. LEGO ESTE O MARCĂ NOTORIE

13. Ca rezultat al vânzărilor extinse ale LEGO, al promovării vânzărilor și al publicității în întreaga lume, precum și al înregistrărilor extinse obținute pentru marca LEGO, LEGO și-a creat o reputație mondială și o încredere impunătoare în marca LEGO. Marca LEGO a devenit distinctivă prin standarde înalte de calitate și consistență a produselor LEGO. Marca LEGO servește pentru a identifica și distinge produsele LEGO de alte componente electronice și de produse media. În Anexa D este atașat studiul RepTrak 2018, care prezintă LEGO ca fiind unul dintre cele mai cunoscute branduri din Europa.

În baza faptelor sus-expuse, este evident că LEGO a înregistrat și a utilizat marca cu bună-credință pe durata mai multor ani în numeroase țări din întreaga lume. Prin urmare, marca LEGO a devenit asociată, în mintea consumatorilor, ca aparținând companiei LEGO și afiliaților săi. Cu alte cuvinte, LEGO a devenit o marcă notorie. Astfel, ar trebui să i se acorde protecția corespunzătoare prevăzută de Legea privind Protecția Proprietății Intelectuale, fără a se limita la o anumită clasă de bunuri.

Și declar că toate afirmațiile de mai sus sunt făcute din cunoștințele mele personale sau pe baza informațiilor primite și corespund cunoștințelor de care dispun.

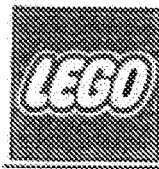
Declarat la Billund, Danemarca, astăzi, 29 august 2018

Semnătura: /semnătura/

Numele: Peter Kjaer

Funcție: VP, Consilier General

LEGO Juris A/S



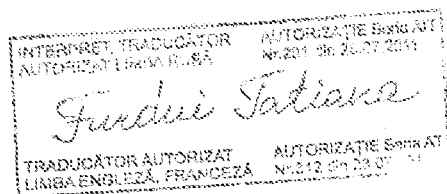
Anexe:

- A. Raportul anual al companiei LEGO din 2017
- B. Copiile documentelor care arată că "LEGO" a fost recunoscută ca marcă de renume
- C. Lista înregistrărilor din întreaga lume a mărcilor LEGO
- D. Studiul RepTrak 2018

The undersigned, **Furdui Tatiana**, authorized
translator in English certify the exactness of the
translation with the original text of the document,
in witness whereof, I apply my signature on
11.09.2018

Furdui Tatiana

Subsemnata, **Furdui Tatiana**, traducător
autorizat în limbi moderne certific exactitatea
traducerii cu textul înscrisului în original, care a
fost vizat de mine la data de 11.09.2018
S-a înregistrat cu Nr. 492

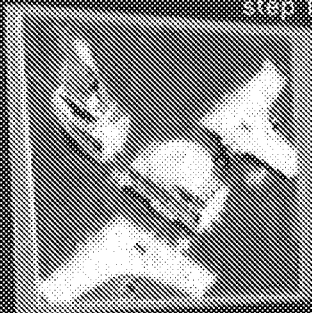


Action, Excitement, Adventure...

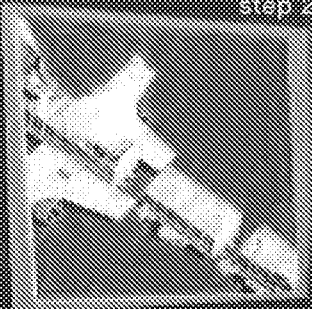
Even a four
year old can
handle.

LEGO® Jack Stone was
specially designed for
younger boys, with fewer,
bigger pieces for
a fun and satisfying
building experience.
Even 4 & 5 year olds can
handle building exciting
adventures and rebuilding
endless new ones. With
so many possibilities,
creating ways to save the
day is within your child's
grasp. Literally.

step 1



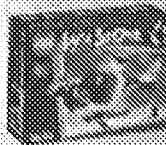
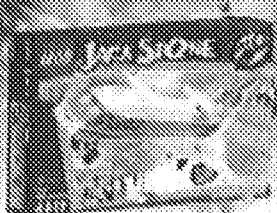
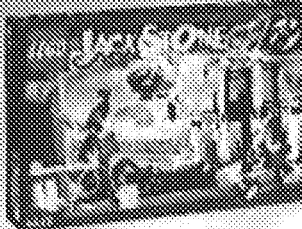
step 2



step 3



LEGO JACK STONE



Find out more about LEGO Jack Stone products at WWW.LEGO.COM
See the new LEGO Jack Stone products at a toy store near you.

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LEGO Group. ©2007 the LEGO Group. All rights reserved.

LEGO

ORIENT
EXPEDITION


Johnny Thunder, il Dottor
Kilroy e Miss Pippin Reed
partono alla ricerca di un
misterioso tesoro!

IN TV DA
NOVEMBRE

VIVI L'AVVENTURA CON
LEGO ORIENT EXPEDITION

7416 Il Palazzo dello Scorpione
Il palazzo dello Scorpione è pieno di misteri e di
pericoli... Riuscirà il nostro Johnny Thunder a
evitare la coda avvelenata dello
scorpione e a trovare il
tesoro perduto?
La confezione
include un gioco
di società.
Da 8 anni.

7419 La Fortezza del Dragone
All'interno della fortezza del
Dragone si cela la sfida dello
sfido... Riuscirà il nostro
Johnny Thunder a
aprire la camera segreta e il
Dragone d'Oro sarà tuo!
La confezione include
un gioco di società.
Da 8 anni.

7417 Il Tempio sul Monte Everest
Sulla montagna più alta del mondo, un antico
tempio sfida i nostri intrepidi viaggiatori!
La confezione include un gioco di società.
Da 7 anni.

LEGO

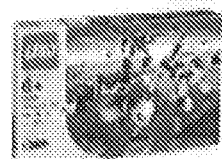
WHAT WILL YOU MAKE?



Models cannot be built simultaneously.
Toys not shown to scale. LEGO, the LEGO logo, the brick configuration and PLAY ON are trademarks of the LEGO Group.
©2003 The LEGO Group. 4236332/03 - CA

32 creations
100% new builds!

From planet eaters to
pocket-sized bots, there
are as many Mini Robots
hiding in this box as ideas
hidden in your head.
What will you let loose
from your Designer Set?
www.lego.com/create



4097 Designer Set
Mini Robots
Ages 8+

Uudet **clikits** Kirjoituspöytätarvikkeet

Somia kehyksiä, sieviä paperiliittimiä, trendikkäitä vasioita ja paljon muuta
- nyt voit järjestää kirjoituspöytäsi oman persoonallisuutesi mukaan!

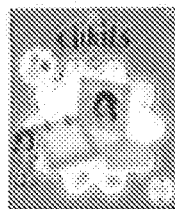
Tee se tyyllillä!



7918
Kuvakirjoitustarvikkeet

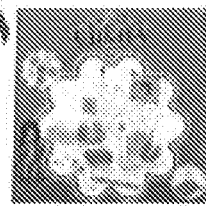


7930
Tähti- ja kuukirjoitustarvikkeet



7929
Kuvakirjoitustarvikkeet

Fiksua ja trendikäästä! Uudista koulutarvikkeitasi ja kirjoituspöytäsi ilmettä näillä uusilla ja tyylikkävillä **CLIKITS**™ tuotteilla! Voit myös tehdä omia **CLIKITS** kortteja ja koristella paperiarkkeja lävistimellä.



7932
Lävistin

www.CLIKITS.com

LEGO
play on



Knights' Kingdom

FIND THE SHIELD SAVE THE KINGDOM

WIN LEGO® BOXES

Name _____

Address _____

Which knight carries this shield? Make a cross!

Send to LEGO XXXXXX XXXX XXXXXX XXX XXXXXX XXXX



0770 DARIU
The Clover



0771 JAYVO
The Quick



0773 NASCUS
The Joker



0773 SANTI
The Strong



0774 VLADCK
The Evil

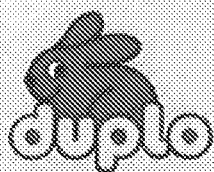
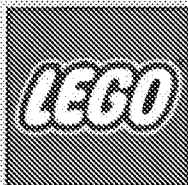
THE QUEST STARTS HERE!

A hand of heroic knights need your help. They must use their different skills to find the magical shield - the only thing that holds the power to defeat Vladek, the evil knight.

FIND THE SHIELD. SAVE THE KINGDOM.

LEGO

play on



Jeden Tag ein neues Abenteuer



ganz
NEU!
ab Oktober
im Handel



4771
Große LEGO® DUPLO® Burg

4776
LEGO® DUPLO® Drachenturm

Gefährliche Drachen und mutige Ritter. Turnierkämpfe und Burgbelagerungen. Ob die Bösewichte mit dem Katapult die Burg erstürmen oder ob Fatgitter und Steinkessel das verhindern? Wie das Abenteuer ausgeht, bestimmt Ihr Kind mit LEGO® DUPLO® selbst. Und da die verschiedenen DUPLO Elemente so vielseitig kombinierbar sind, wird aus einem Burghof ganz schnell der höchste Turm im Königreich.

Ab 3 Jahren

BAUE UND PROGRAMMIERE ROBOTER, DIE DAS MACHEN, WAS DU WILLST!



NXT Intelligenter Stein
Der programmierbare Gehirn des Roboters



Sound Sensor
Kann Geräusche hören und auf sie reagieren



Ultrasonic Sensor
Ist in der Lage, die Entfernung zu einem Objekt zu messen



Interaktive Motoren
Kann programmiert werden, um auf bestimmte Reize zu reagieren



Innovation 2006

ALPHA REX

Alpha Rex ist ein beeindruckender Roboter, der die komplexen Aufgaben ausführen kann, die ein richtiger Mensch gut kann.

TRIDOR

Ein flexibler und schnell-fahrender Roboter auf drei Rädern. Er nutzt vier Sensoren, um das zu machen, was du programmiert hast.

SPIDE

Spide reagiert wie ein echter Skorpion. Er kriecht auf seinen sechs Beinen und wenn du auf ihn kommt, sticht er zu.

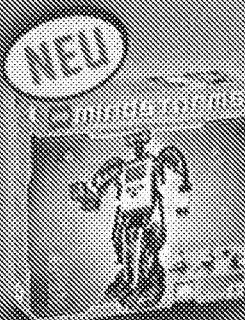
WERDE DER ULTIMATIVE ROBOTERMEISTER

Mit den neuen LEGO® MINDSTORMS® NXT Robotersets kannst du die coolsten Roboter bauen, die es jemals gab. Bauen und programmieren hoch entwickelte, menschenhähnliche Roboter, die sehen, hören, sprechen und gehen können. Bauen Roboter, die dein Zimmer bewachen und deinen Haushalt machen. LEGO® MINDSTORMS® NXT lässt dich zum ultimativen Robotermeister werden.

Beobachte, wie dein erster Roboter in weniger als 30 Minuten lebendig wird. Du bekommst alle Technologien, die du benötigst: Einen programmierbaren, intelligenten Stein, einen Ultraschallsensor, einen Sound Sensor, einen Lichtsensor und einen Berührungssensor, drei interaktive Servomotoren und eine Range Finder – alles, was du brauchst, um einen Roboter deiner Träume zu bauen.

Programmiere Roboteraktivitäten auf deinem Computer

• PC • Mac • Bluetooth • USB • RS-485



MINDSTORMS

NXT

www.mindstorms.com

トクシユフクイ

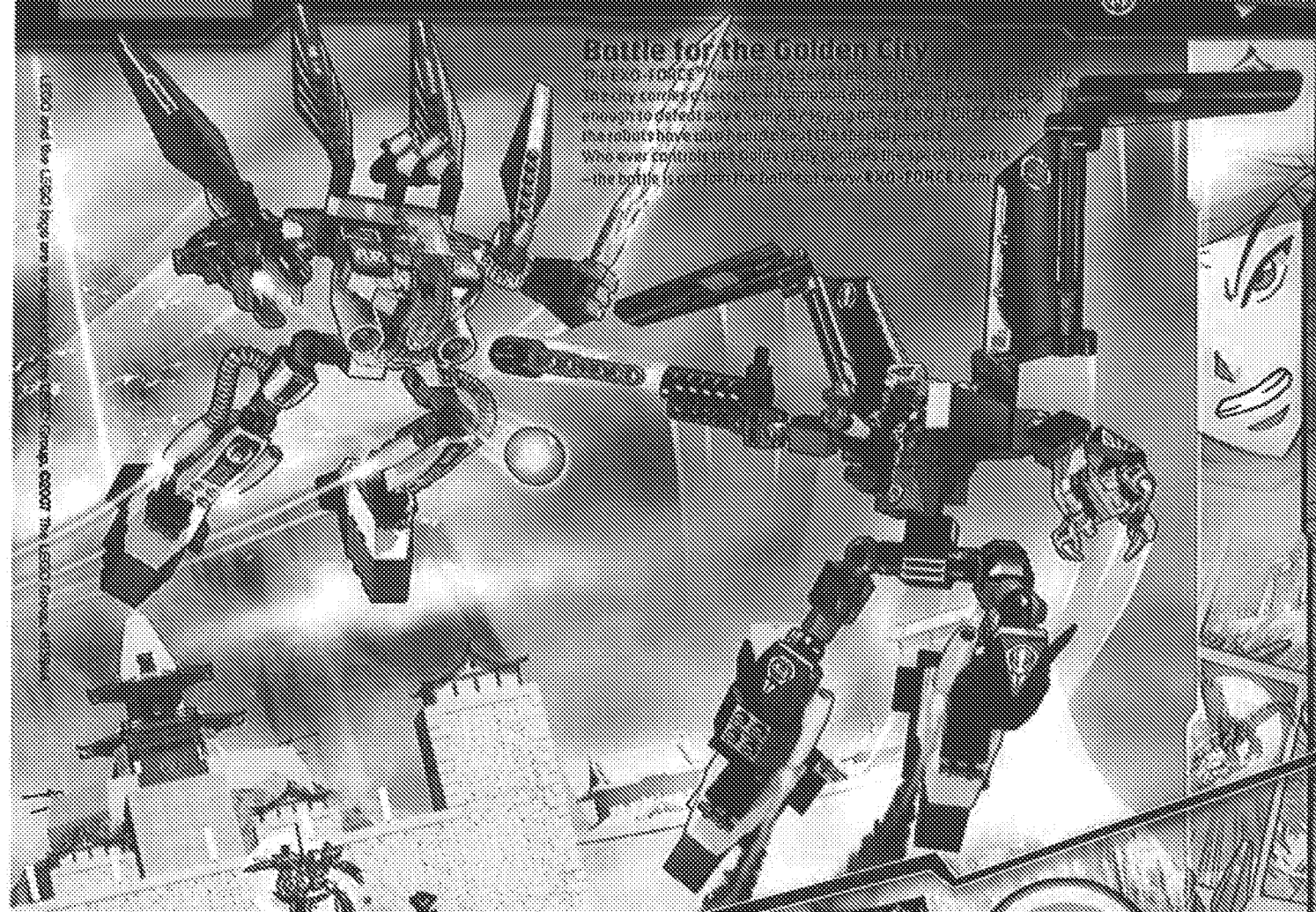
LEGO EXO-FORCE



Battle for the Golden City

The EXO-FORCE™ robots are on a mission to save the Golden City from the evil forces of the Iron Conder. The city is under attack and the robots are the only ones strong enough to defend it. The Iron Conder is a powerful machine that the robots have been fighting for a long time. Who ever controls the Golden City controls the EXO-FORCE power. The battle is on for the Golden City. www.EXO-FORCE.com

LEGO and the LEGO logo are trademarks of the LEGO Group. ©2007 The LEGO Group. All rights reserved.



Win new
Exo Force
boxes

8102
Blade Titan ☐

8103
Sky Guardian ☐

8104
Shadow Crawler ☐

8105
Iron Conder ☐

What are the names of the two battle machines
flying and fighting in the air?

Name _____
Address _____

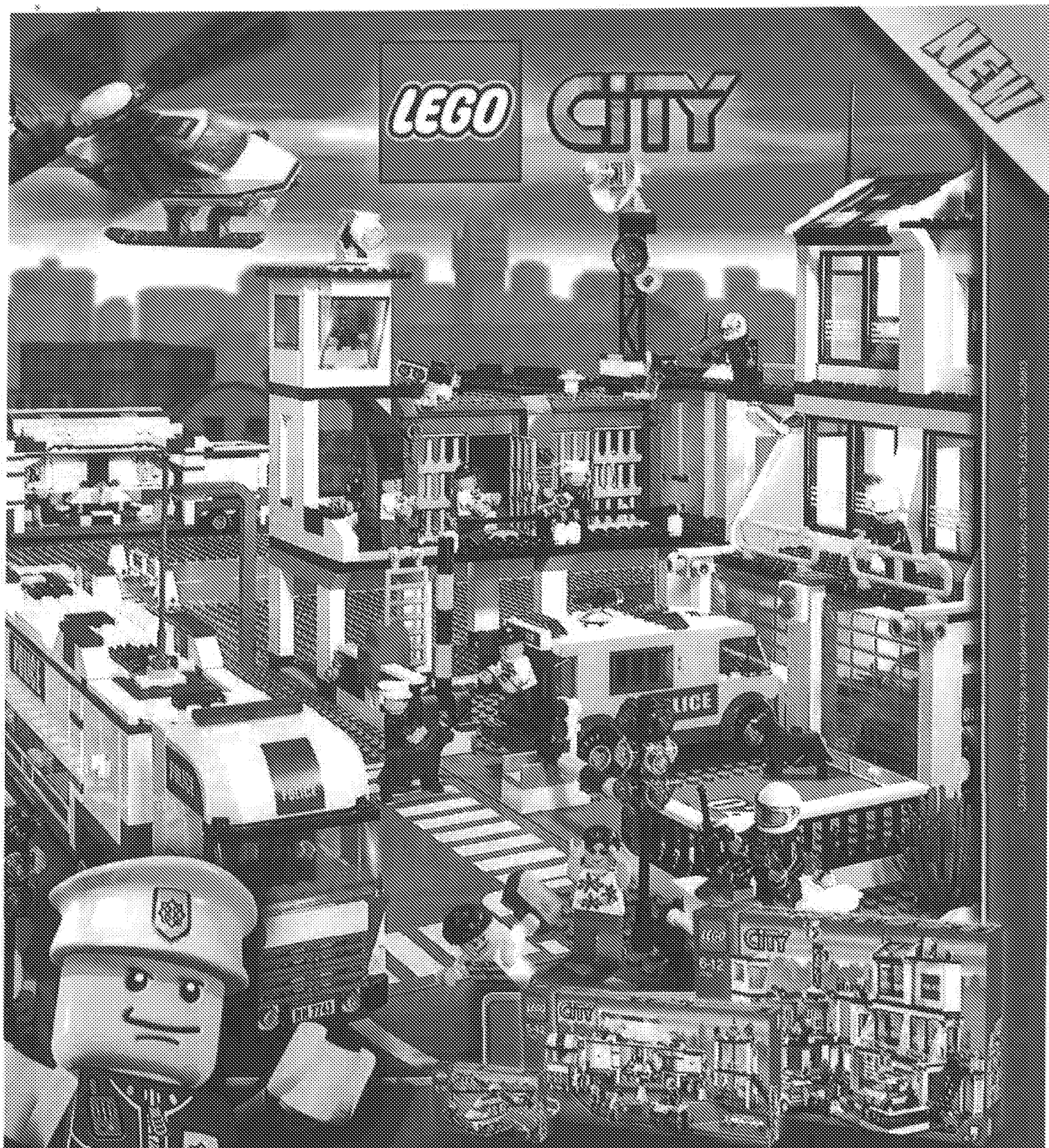
www.exo-force.com www.exoforce.ru

Send this coupon to:
LEGO XXXXXXXXXXXX XXXX XXXXXX XXXX XXXX
XXXX XXXXXXXXXXXX XXXX XXXXXX XXXX XXXXXXXX

LEGO

CITY

NEW



Art. 7741

Art. 7743

Art. 7744

HELP THE POLICE...

- ... with the new police collection!
- Catch the robbers with the police truck
 - Take them to the new police station
 - Lock them up in the prison block

How many LEGO® Police men
can you find on the picture?

Please mark with a X.

4



9



15



Name _____

Address _____

Send this coupon to:

LEGO® POLICE COLLECTION - ART. 7741, 7743, 7744 - LEGO® POLICE COLLECTION
LEGO® POLICE COLLECTION - ART. 7741, 7743, 7744 - LEGO® POLICE COLLECTION



LEGO

RACERS

STOMP YOUR PUMP

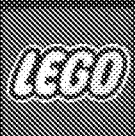


THE NEW POWERFUL LEGO® RACERS & THE NEW AIR PUMP
- GET THEM ALL. STOMP YOUR PUMP AND START RACING...

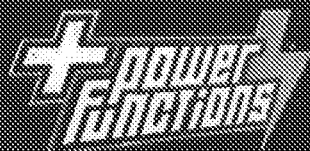
7967 7968 7971 7970



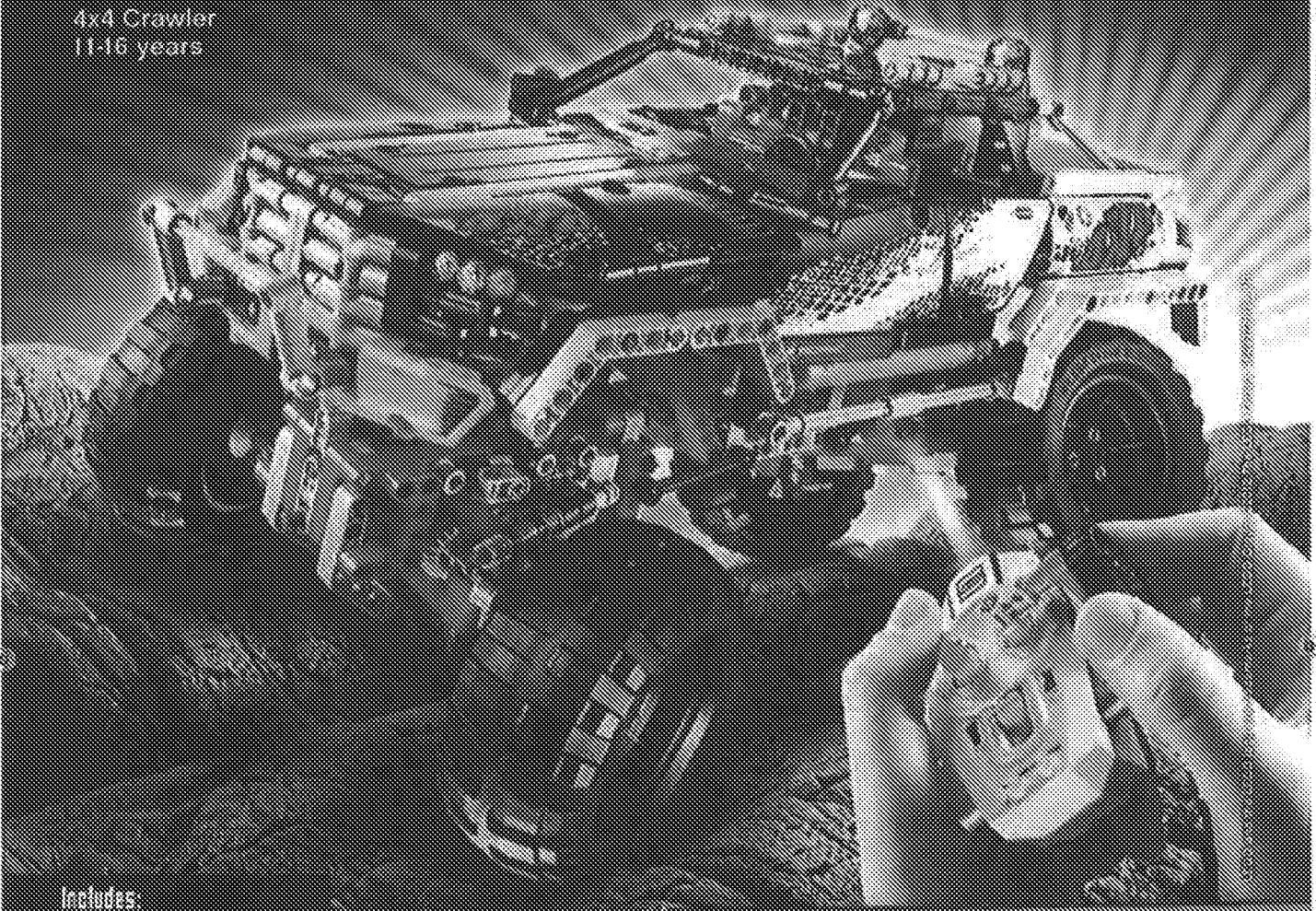
racers.LEGO.com



TECHNIC



9398
4x4 Crawler
11-16 years



Includes:



Remote control



Battery box



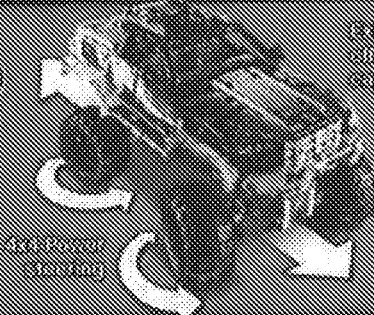
Receiver



Servo motor



2 Large motors

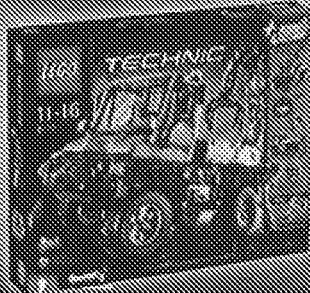


4x4 Power steering

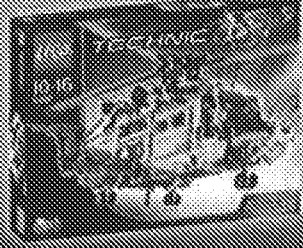
Extreme off-road capabilities



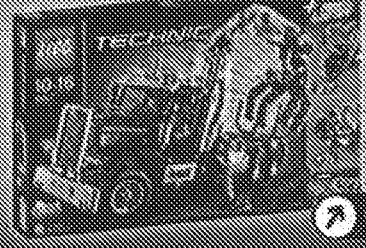
11-16 years

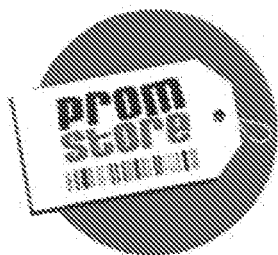


10-16 years



10-16 years





(/ro/)

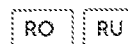
căutare

022 800 456



079 303 039

(/ro/cart)

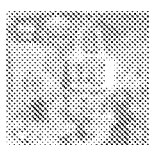


PAGINA PRINCIPALĂ (/RO/) > JOCURI ȘI JUCĂRII (/RO/GAMES-AND-TOYS) > JOCURI (/RO/GAMES-AND-TOYS/GAMES)
> CONSTRUCTORI (/RO/GAMES-AND-TOYS/GAM...) > CONSTRUCTOR "LEPIN" CASTELUL PRINTESEL...

Constructor "Lepin" Castelul printeselor 31...



(<https://i.simpalsmedia.com/marketplace/products/original/8647f1468446713894dceaeda1b16f13.jpg>)



489 lei

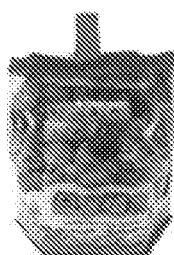
cumpără

ID # 02750

Internet magazin - este
Dacia 47/6 - este
Mircea cel Batrin 7 - este

În Chișinău: **35 lei**
În Moldova: nu este

Produse asemănătoare



(/ro/5148309)

459 lei

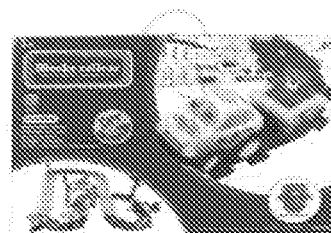
Constructor
"Blocksland" 278buc,



(/ro/5623560)

489 lei

Transformer 45X15X35
(/ro/5623560)



(/ro/5148303)

489 lei

Constructor cu masini
"Blocks railcar" 50 buc,

ADRESA MAGAZINELOR

Botanica Ciocana

bd. Dacia 47/6

Luni-Vineri 9.00-21.00

079 303-039

info@promstore.md

16.08.2019

Constructor "Lepin" Vapor 337buc în stock cumpără de la Promstore rapid cu livrare în Chișinău și Moldova în price.md



Даром (бесплатно) неизвестные сведения о финансовом Арене

[înregistrare](#) [intră](#) [română](#)

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caută cel mai bun preț printre 342688 oferte

caută

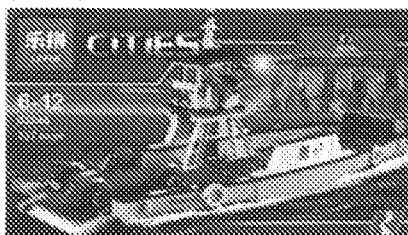
[Prețuri \(ro\)](#) [Mărfuri pentru copii \(ro/kids-goods\)](#) [Jucării \(ro/kids-goods/toys\)](#) [Constructori \(ro/kids-goods/toys/constructors\)](#)

Constructor "Lepin" Vapor 337buc



Acest produs se vinde în PROMSTORE

Articol 02788



preț: **459** lei [accesati site-ul \(//promstore.md/ro/5148320\)](#)

[Plângere către vânzător \(fother/report_client_form/5148320/baaaa61b-bd75-4bbf-8d07-f3260bdc4f90\)](#)

[UNDE CUMPĂR](#) [DESPRE PRODUS](#) [COMENTARIJ 0](#)

PROMSTORE

22800456
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459 lei


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PRODUSE VIZUALIZATE



Constructor "Lepin"
Vapor 337buc

459 lei
(/ro/5148320/?)
1 magazin (/ro/5148320/?)



Constructor "Lepin" Omul
Paianjen 400buc

489 lei
(/ro/5148317/?)
1 magazin (/ro/5148317/?)



Când un agent de patrulare poate opri un autovehicul în trafic

[înregistrare](#) [intră](#) [română](#)

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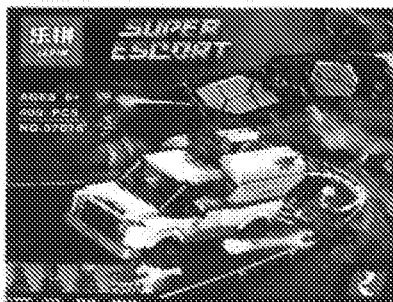


caută cel mai bun preț printre 342693 oferte

caută

[Ajută](#) ([ro/](#)) [Mărfuri pentru copii](#) ([ro/kids-goods](#)) [Jucării](#) ([ro/kids-goods/toys](#)) [Constructori](#) ([ro/kids-goods/toys/constructors](#))

Constructor "Lepin" Omul Paianjen 400buc



Acest produs se vinde în PROMSTORE

Articol 02789

preț **489** lei

[accesaj site-ul](#)
(//promstore.md/ro/5148317)

[Plângere către vânzător \(/other/report_client_form/5148317/baeas61b-bd75-4bbf-8d07-f3260bdc4f80\)](#)

UNDE CUMPĂR

DESPRE PRODUS

COMENTARII 0

PROMSTORE

22800456
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489 lei



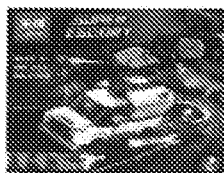
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PRODUSE VIZUALIZATE



Constructor "Lepin"
Vapor 337buc

459 lei
(/ro/5148320/?)
1 magazin (/ro/5148320/?)



Constructor "Lepin" Omul
Paianjen 400buc

489 lei
(/ro/5148317/?)
1 magazin (/ro/5148317/?)

Anexa 4

O/142/19

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 3236070 OWNED BY
SHANTOU CHENGAI DISTRICT LONGJUN TOYS FACTORY CO., LTD
FOR THE TRADE MARK



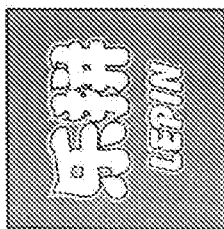
IN CLASS 28

AND

THE APPLICATION FOR A DECLARATION OF INVALIDITY THERETO
UNDER NUMBER 501966
BY LEGO JURIS A/S

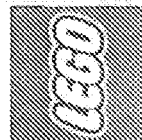
Background

1. On 8 June 2017, Shantou Chenghai District Longjun Toys Factory Co., Ltd ("the proprietor") filed trade mark application number 3236070 for the mark



for Toys; Building blocks [toys]; Dolls' houses; Dolls' rooms; Toy vehicles; Radio-controlled toy vehicles; Toy models; Jigsaw puzzles; Controllers for toys; Toy robots, in class 28. The mark achieved registration on 1 September 2017.

2. On 6 February 2018, LEGO Juris A/S ("the applicant") applied to have the registration declared invalid under section 47(2) of the Trade Marks Act 1994 ("the Act"), on the basis that it was registered contrary to sections 5(2)(b), 5(3) and 5(4)(a) of the Act. The grounds under sections 5(2)(b) and 5(3) are based upon the applicant's earlier European Trade Mark 2629463:



3. This mark was filed on 28 August 2002, registered on 7 January 2004, and claims the colours red, white, black and yellow. The applicant relies upon "Games and playthings in class 28", in relation to which it has made a statement of use. The applicant claims that there is a likelihood of confusion under both sections 5(2)(b) and 5(3), and that use of the later mark would give the proprietor an unfair advantage and cause detriment to the distinctive character and repute of the

applicant's mark. The applicant states that the later mark has been used for goods which are of poor quality.

4. Under section 5(4)(a) of the Act, the applicant relies upon its use of a sign corresponding to its registered mark, shown above, which it states was first used throughout the UK in 1973. The applicant states that the earlier right has been used in relation to "Toys (including building blocks, toy models, dolls houses, toy vehicles, radio controlled toy vehicles, jigsaw puzzles and controllers for toys and toy robots), video games, films, TV programmes, theme parks, clothing and accessories, books and other publications, stationery products, pictures, kitchenware, mobile phone and iPod covers, clocks and watches and educational services." The applicant claims that its valuable reputation and goodwill entitles it to prevent the use of the later mark under the law of passing off.

5. The proprietor filed a defence and counterstatement, denying all the grounds. The proprietor requests the applicant to prove that it has made genuine use of its earlier mark.

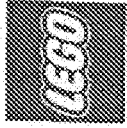
6. As the proprietor has played no further part in these proceedings, I reproduce below its counterstatement in full:

The Proprietor hereby gives the Counter-statement against Notice of Cancellation (No. CA000501966) of Shantou Chenghai District Longjun Toys Factory Co., Ltd:-

1. The Proprietor, Shantou Chenghai District Longjun Toys Factory Co., Ltd with address at No.4, National road on the east side, Zhulin Village, Lianshang Town, Chenghai District, Shantou, China, is a company organized under the laws of China.

2. "LEGO" is a known and recognised dictionary word in the English language means "A construction toy consisting of interlocking plastic building blocks", which originates from Danish leg godt "play well", from lege "to play".
[Oxford English Dictionary]

3. "LEPIN", on the other hand, is not a dictionary or recognised word and it has no meaning in the English language. It is a coined word created by the Proprietor himself. Actually, it is the transliteration of the two Chinese characters in the mark, "LE" means "happy, cheerful, laugh" and "PIN" means "spell; piece; risk" in English. It is submitted that LEPIN immediately strikes and conveys the impression to the average UK consumer generally, as a foreign word (e.g. Chinese) of unknown meaning, or a coined term. These facts distinguish it immediately from the "LEGO" mark.



4. Further, the Cancellation Applicant's trade mark consists of the literal element "LEGO" in white with black and yellow outlines, the background of the design is red. Color, font and typeface are unique identifying qualities of the mark. It is clearly identified by consumers that the inherent distinctiveness is the color, customers will be attracted by its unique color combination at the very first sight and are likely to combine the color mark with its goods in some degree.

5. The Proprietor's mark contains two Chinese characters and the word "LEPIN" below. The Chinese characters dominates the main part of the mark, and the customers are likely to associate the mark and its goods with China or Chinese company. There are no fixed color features in Proprietor's mark. The Proprietor's mark is clearly identified by consumers that the inherent distinctiveness is the Chinese characters and Latin words "LEPIN". Thus, the visual appearance of the marks on the whole are noticeably different and unlikely to result in source confusion.

6. The prefix "LE-" is common in the English language. A brief review of the UKIPO database, reveals numerous marks containing this prefix in class 28, including Legume, LEEDA, Lepow, Leboo, Leven, LeTea, LEMUR, LEKI, LEXICON. Both "LEPIN" and "LEGO" is a single word with only four or five letters, the average customers pay equal attention to the whole wording. Although the goods toys are mainly aimed at children, those who purchase and recognize the mark are their parents, namely, adults. The average English speaking reader, and also the average UK consumer are unlikely to be confused by "PIN" and "GO" or caused to wonder whether one trademark is similar to the other. Therefore, the Proprietor's marks "LEPIN" is dissimilar with the Cancellation

Applicant's mark visually and aurally.

7. The marks are therefore dissimilar, the use or registration of the Proprietor's mark will not cause any damage to the Cancellation Applicant.

8. Conclusively, The Proprietor denies all the allegations of the Cancellation Applicant in the Notice of Cancellation dated 14 February 2018.

9. By reason of the matters set forth herein and by virtue of the law and in the exercise of the Registrar's discretion, The Proprietor pray that these Cancellation Proceedings be refused and that the Proprietor's mark be valid, and that costs in favor of The Proprietor be ordered against the Cancellation Applicant.

7. The applicant filed evidence. It has been represented throughout the proceedings by Stephenson Harwood LLP. The proprietor is represented by Mr Ray Young (in as much as the only participation in the proceedings has been the filing of the defence). The matter came to be heard on 15 February 2019, by video conference. Mr Guy Hollingworth, of Counsel, instructed by Stephenson Harwood LLP, appeared for the applicant. The proprietor did not attend, did not send representation and did not file written submissions in lieu of attendance.

Evidence

8. The applicant has filed evidence from the following three people:

i) Marina Edwards, who is the Vice President and General Manager (UK and Ireland) at LEGO Company Ltd, which is part of the LEGO Group of Companies. I will refer to her evidence as being about the applicant, for convenience. Her first witness statement is dated 25 June 2018. Her second, dated 6 July 2018, was filed in response to the registry's refusal to grant confidentiality in respect of some of the

content in her first witness statement, content which the applicant subsequently withdrew.

ii) Peter Taylor, who is a solicitor with the conduct of these proceedings on behalf of the applicant (and a consultant for Stephenson Harwood LLP). His witness statement is dated 20 June 2018.

iii) Peter Kjaer, who is Vice President and Deputy General Counsel at LEGO System A/S, part of the Lego Group. As before, I will refer to his evidence as being about the applicant.

Ms. Edwards' evidence

9. I set out here some of the headlines from Ms Edwards' evidence. When I refer to LEGO, it is to the earlier mark.

- The applicant's UK and Ireland advertising spend for the mark during 2013-14 was more than £150 million, in France more than £120 million, in Germany more than £250 million and throughout the EU more than £1,000 million.
- Between 2013-16, the applicant received more than £75 million in royalties from the sale of LEGO-branded video games in the UK. More than 25 million LEGO video games were sold in the UK between 2015 to 2017.
- Between 2015-17, the applicant received more than £8 million in royalties from UK sales of LEGO clothing and accessories, books and publications, stationery, pictures, kitchenware, mobile phone and iPod covers, clocks and watches.
- The mark has been used in its registered form since 1998, and is substantially unchanged since 1973. It is used in its registered form on all the applicant's product packaging, advertising, websites, social media, signage and stationery throughout the EU.
- 78% of UK children owned LEGO goods in 2017.
- In January 2000, LEGO (i.e. the goods sold under the LEGO mark) was named Toy of the Century by the British Association of Toy Retailers.

- Between 2013 and 2017, turnover in relation to LEGO toys in the UK and Ireland came to £1,265 million.
- There have been over 600 LEGO sets under the 'Star Wars' theme, since 1999. The Bionicle theme was released in 2001, consisting of buildable action figures. Pictures of the packaging for these are shown, with the mark in the top left-hand corner.
- The applicant has fourteen stores in the UK, all prominently displaying the LEGO mark. The goods are also sold via the applicant's online store, and in a wide range of other retailers. An average of 9 million UK consumers have visited the LEGO website annually in the last five years.
- The applicant's theme park, LEGOLAND Windsor, had 2.138 million visitors in 2016, making it the most visited UK theme park. Exhibit ME13 shows that the LEGO mark is used in conjunction with the name of the theme park.
- Over 67 video games have been released since 1995 based on the LEGO mark. The packaging always bears the mark. There is also a LEGO movie franchise. The 2014 movie generated £42 million in revenue in the UK and £90 million in the UK. The 2017 LEGO Batman movie generated £25 million in the UK and £48 million in the EU.

10. In relation to specific types of toys, other than building bricks and construction sets, I note the following from a catalogue¹ dated from January to June 2017, which is within the relevant period for the purpose of proof of use:

- Page 8: dolls' houses and toy vehicles
- Page 15: action figures

Peter Taylor's evidence

11. Mr Taylor states that he has advised the applicant on intellectual property since about 1985. He has direct knowledge of the steps the applicant has taken to protect and enforce its mark. Mr Taylor states that the purpose of his evidence is to show how the LEPIN logo has been used in the UK, the action which the applicant has

¹ Exhibit ME3.

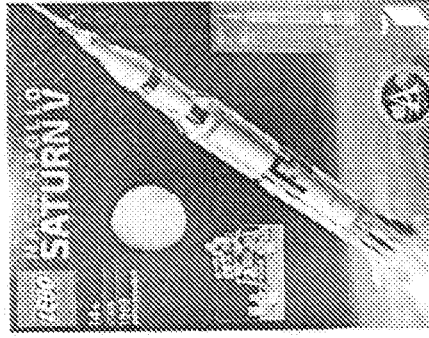
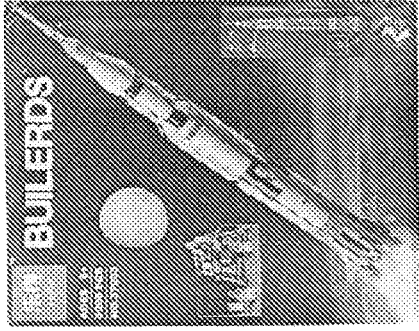
taken against a UK-based seller of LEPIN products; how the LEGO mark, even without the word LEGO, is distinctive of the applicant in the UK; and what it has done to protect its mark in the UK. The following is a summary of what I consider to be relevant, or which provides context, to the issues to be decided in these proceedings.

12. Mr Taylor provides prints of the proprietor's goods on sale on Amazon.co.uk (as at 18 January 2018); for example:



In April 2018, Mr Taylor made test purchases of the proprietor's goods from a UK seller. He provides photographs of two of the boxes, together with photographs of the corresponding LEGO sets:



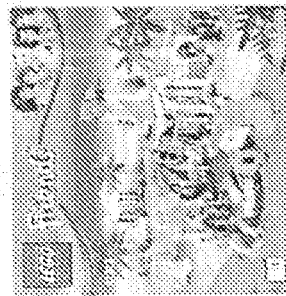
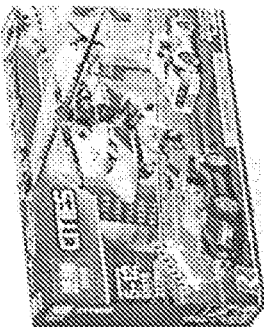
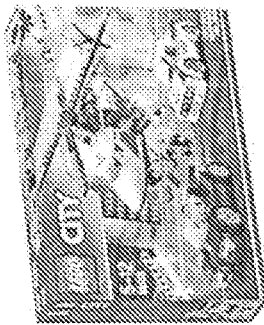
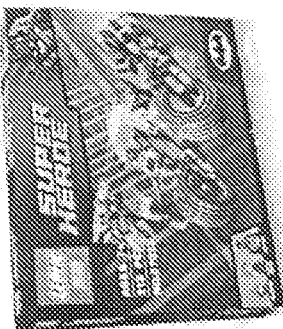
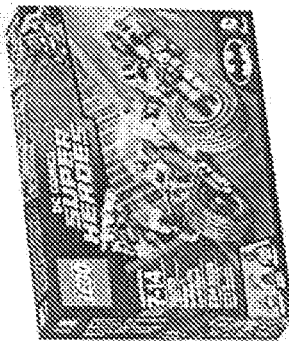


13. Mr Taylor states that the building instructions in the proprietor's goods were almost identical copies of the building instructions for the corresponding LEGO sets.

Peter Kiaer's evidence

14. Again, I refer here only to evidence which I consider to be relevant to the issues to be decided in these proceedings.

15. Similar examples to those shown above are referred to by Mr Kjaer in his witness statement:



16. Mr Kjaer's evidence shows that the LEGO mark is largely unchanged since its 1973 form, including its arrangement of colours. He points out that the proprietor uses its mark in the same colour combination as the LEGO mark, with a very similar shade of red. In answer to the proprietor's statement that "LEGO" is a known and recognised dictionary word in the English language means [sic] "A construction toy consisting of interlocking plastic building blocks" which originates from Danish leg godt "play well", from lege "to play". [Oxford English Dictionary]. Mr Kjaer exhibits² a copy of an extract from the Oxford English Dictionary (the edition is not specified) showing the entry for "Lego" and that the publishers of the dictionary have recorded 'Lego' as a trademark:

LEGO a new trademark a toy consisting of interlocking plastic building blocks.
- origins from Danish leg godt 'play well'.

17. Mr Kjaer states that the applicant's Consumer Service Department, which is based in the UK but covers the EU, has received a large number of complaints from the public about the proprietor's LEPIN products. Exhibit PTK3 comprises a schedule of such complaints. As the present proceedings concern matters from the UK public's perspective (whether a likelihood of confusion, a link/damage and/or misrepresentation), the entries from EU countries other than the UK do not have a bearing on the assessment I must make. There are a number of UK entries, but not all of them show unequivocally that confusion has arisen because of the trade marks. It is not clear whether the packaging has also played a part, or the instruction booklet, for example. Some of the comments do not demonstrate confusion but demonstrate some other kind of comparison being made by consumers. I acknowledge that comments such as these may be relevant to the ground of invalidation under section 5(3) of the Act. The UK comments that I consider to be relevant are as follows (reproduced verbatim):

- May 2016: "Hi recently seen on other selling sites sets looks very much like Lego but called lepin can you please tell me is this Lego made for another country?"

² Exhibit PTK2

- June 2016: Hello there, I was just having a look around google and I noticed a photo of what I thought was a Lego Set but when I looked closely I see this was a copy of a Lego Set by "Lepin" (I am guessing Lego is familiar with this and knows about this company). I then noticed many more sets made by this company with what looks like the exact photo of what is on the front of the Lego Boxes. I just want to know if this company will be challenged at all, as I am collector and seller of new Lego Parts and I know that when I purchase official Lego this is quality assured, but from what I see Lepin could undermine this and flood the market with cheap copy's. Looking forward to hearing from yourself. Kind regards"
- July 2016: "Hi I don't have a problem with the product you sell but I recently bought the new Lego millennium falcon 75105 from Amazon. I received my parcel 2 weeks later and it was not Lego at all! It had your logo but where it should say Star Wars it say STAR WARS hah! I thought I would inform you of this, I would want to know if someone was selling products with my logo on pretending it's Lego. If you would like more details on the purchase please just ask. Thanks."
- May 2017: "Hi, I saw and advert floating around Facebook this morning for something very similar to Lego right down to the red boxed logo. I'll copy in the link to the site. I never got anything flagged up from it, but please do whatever checks you need to first to ensure you're happy it's safe. The brand seems to "Lepin" now it could simply be that this is Lego for another market I genuinely don't know. They seem to carry lots of individual characters aswell as full build sets."
- June 2017: "Hi I find a website to buy LEGO cheaper than normal but I am not sure if it is legal. This is the site: <https://blockings.com/>. Any help?" A follow-up comment from the applicant's Customer Advisor was "Customer replied, asking if we really do not care, or believe that it is okay that the website previously sent, blockings.com, which is a LEPIN distributor website also stating that their products are not genuine LEGO in some instances. Going to

apologize for the confusion, reiterate that we do not approve of LEPIN, explain briefly that there's a lawsuit underway, and will thank him for being a loyal LEGO fan."

- July 2017: "Hello LEGO, I'm writing to you to ask what is being done about LEPIN. This knock off LEGO is making me furious. I'll tell you why. I believe in Lego, and what it represents, it's values and enjoyment. My parents bought Lego for me, my grandparents bought Lego for me, I inherited the bulk of my 'big Lego box' from family friends and when I have children I will be buying them Lego. I am a huge fan of Lego and I build sets regularly. Lego encapsulates my childhood and partially defines who I am as a person, my interests and as a teacher I use it in class daily. Lego is in my blood. It pains me to see all this fake knock off lego that has infiltrated the market around the globe. You tubers actively review lepin sets and how they compare to Lego versions. I'm sure Lego absolutely know about this, but it boils my blood to see reviewers promoting, directly or indirectly illegal knock off lego. The Lego I know and the Lego we all enjoy is being corrupted by lepin. What is the Lego group doing about this?..."

18. Mr Kjaer refers to reviews of the proprietor's goods which are unfavourable as regards quality, such as Exhibit PTK5, which comprises an article published on Brickset.com on 30 July 2017. This is described as an independent company which provides information about the applicant's products. The reviewer makes negative comments about some of the LEPIN parts being grubby because of grease in the injection moulds, together with other faults caused by poor injection moulding. The author says that such flaws are relatively unheard of with LEGO products, and that the proprietor's after-sales care is non-existent.

Decision

Section 5(2)(b) of the Act

19. Section 5(2)(b) of the Act states:

“(2) A trade mark shall not be registered if because --

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

20. Section 47 of the Act states:

“(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2A) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless --

- (a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,
- (b) the registration procedure for the earlier trade mark was not completed before that date, or
- (c) the use conditions are met.

(2B) The use conditions are met if --

- (a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes --

- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (2B) or (2C) to the United Kingdom shall be construed as a reference to the European Union.

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated

for the purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

(3) An application for a declaration of invalidity may be made by any person, and may be made either to the registrar or to the court, except that-

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(4) In the case of bad faith in the registration of a trade mark, the registrar himself may apply to the court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed."

21. The relevant period for proving use of the earlier mark is 7 February 2013 to 6 February 2018 (the five years ending on the date of the application for a declaration of invalidity). In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) (28 June 2018), Arnold J. summarised the case law on genuine use of trade marks:

"114. The CJEU has considered what amounts to "genuine use" of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundesvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 *P Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592] [2014] ETMR, Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1735.

115. The principles established by these cases may be summarised as follows:

- (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
- (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].
- (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods

are manufactured and which is responsible for their quality: Gözze at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71]; Reber at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Leno at [29]-[30], [58]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For

example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: Ansel at [39]; La Mer at [21], [24] and [25]; Sunrider at [72] and [76]-[77]; Leno at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32]."

22. The onus is on the opponent, as the proprietor of the earlier marks, to show use because Section 100 of the Act states:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

23. The turnover figures are of considerable magnitude. It is abundantly clear from the evidence (and it is a notorious fact) that the earlier mark has been used during the relevant period in relation to toy building bricks and toy construction sets. The evidence also shows use on dolls' houses, action figures and toy vehicles within the relevant period. I consider that a fair specification³ bearing in mind the scale and breadth of the applicant's use of its mark is the specification relied upon: "Games and playthings in class 28."

24. The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

³ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch).

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

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

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

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

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

25. The competing goods are shown in this table:

Applicant's mark	Proprietor's mark
Games and playthings in class 28.	Toys; Building blocks [toys]; Dolls' houses; Dolls' rooms; Toy vehicles; Radio-controlled toy vehicles; Toy models; Jigsaw puzzles; Controllers for toys; Toy robots.

26. The law requires that goods be considered identical where one party's description of its goods encompasses the specific goods covered by the other party's description (and vice versa): see *Gérard Marc v OHIM*, Case T-33/05, General Court ("GC"). The goods in the proprietor's specification are identical to those of the applicant because the applicant's description of its goods encompasses those of the proprietor. Further, the proprietor has not denied identity, or made any comment at all in its counterstatement about similarity of the goods.

Average consumer and the purchasing process

27. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

28. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Waer Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

29. The parties' goods are aimed at children (on a notional basis, notwithstanding the applicant's evidence that adults also build its construction sets for their own enjoyment). In the main, given the age group that plays with toys, it is likely to be adults who make the purchase, perhaps with children pointing out their particular choice. The purchase will be predominantly visual (from a shelf, catalogue or website) and an average degree of attention will be paid, or less if the toy is of low cost.

Comparison of marks

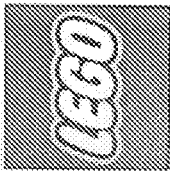
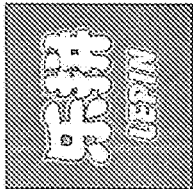
30. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not analyse its various details. The same case also explains that the visual, aural and conceptual

similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components.

31. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that

".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, *inter alia*, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

31. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are:

Earlier mark	Later mark
	

32. The overall impression of the earlier mark is dominated by the word ^{1,2}LEGO. Although the Chinese⁴ characters in the later mark are larger than the word LEPIN, the majority of UK average consumers will not be able to read the characters and will focus on LEPIN. For this reason, I consider that neither element dominates the other and that they contribute equally to the overall impression of the later mark.

⁴ Both parties have said that the characters are Chinese.

33. There is no colour claim in relation to the later mark. The applicant claims the colours red, white, black and yellow which means that the colours are a feature of its mark. I will say more about colour later in this decision but for now will note the visual arrangement of the colours in the earlier mark. The earlier mark comprises the word LEGO presented in the middle of a red square background. The letters are white, in upper case, slanting forwards, outlined firstly in black and then in yellow. The later mark also comprises a square background with white letters, in upper case, also slanting forward, outlined in black and then in a lighter shade. The word LEPIN is one letter longer than LEGO, and both words begin with LE. The later mark also contains Chinese characters, which have no counterpart in the earlier mark. Overall, there is a low degree of visual similarity between the marks.

34. The only element of the later mark which is likely to be pronounced by the average UK consumer is LEPIN. Although the first syllable is the same (LE), the second syllables are completely different in sound (GO and PIN). There is a low to medium degree of aural similarity between the marks.

35. Neither mark means anything in English. I will address the proprietor's dictionary point below. As neither mark has a meaning for the average UK consumer, they are conceptually neutral.

Distinctive character of the earlier mark

36. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*⁵ the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in *Joined*

⁵ Case C-342/97

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

37. The proprietor's claim that Lego is a known and recognised dictionary word in the English language which 'means' a construction toy is misguided. As the applicant's evidence shows, it is recorded in the Oxford English Dictionary as a trade mark. It does not 'mean' anything in the sense that words have definitions. Presumably, 'Lego' has made it into the dictionary because it is a famous trade mark. As LEGO is an invented word (from the Danish words *leg* godt, to play well), in the UK it has a high level of distinctive character inherently, or *per se*. In terms of the colour claim, the specific colours are an added factor contributing to the mark's inherent distinctiveness.

38. One of the principles which must be taken into account in deciding whether there is a likelihood of confusion is that there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either *per se* or because of the use that has been made of it. Distinctive character is a measure of how strongly the mark identifies the goods of the applicant. The applicant's evidence shows that it sells vast quantities of its goods every year in the UK (and in the EU). Even though the turnover figure is a combined figure for the UK and Ireland, it came to £1,265 million between 2013 and 2017. By any stretch of the imagination, even if the UK only accounted for half of that (which seems unlikely, given relative population figures), that is an enormous figure for the goods in question. The applicant's mark

has been used in its registered form since 1988, a form which is largely unchanged since 1973, in the same colours, in the same arrangement. The colour arrangement has been recognised by the proprietor, at least in relation to inherent distinctiveness, because it states in its counterstatement:

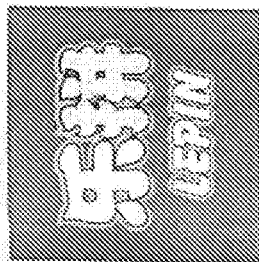
"Color, font and typeface are unique identifying qualities of the mark. It is clearly identified by consumers that the inherent distinctiveness is the color, customers will be attracted by its unique color combination at the very first sight and are likely to combine the color mark with its goods in some degree."

39. I find that, at least in relation to construction toys, the earlier mark is about as distinctive as it is possible to be by virtue of its use. The arrangement of the colours, which has been unchanged since 1973, is a contributing factor to the mark's inherent and enhanced level of distinctiveness.

Likelihood of confusion

40. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. The parties' goods are identical.

41. I note that the counterstatement refers to the contested mark not having any "fixed color features". Put more correctly, the contested mark notionally covers use in any colour because it is registered in monochrome. The applicant's evidence shows the proprietor's mark in use in colour and, importantly, shows it in use in exactly the same arrangement of colours as the earlier mark: a bright red background square, with white forward-slanting upper-case letters which are firstly outlined in black and then in yellow:



42. Tribunal Practice Notice ("TPN") 1/2014 is relevant because it concerns the applicability of the CJEU's judgment in *Specsavers International Healthcare and Others v Asda Stores Limited*, Case C-352/12 to cases before the Registrar under sections 5(2)(b) and 5(3) of the Act, with respect to colour:

"1. The judgement of the Court of Justice of the European Union ("CJEU") in Case C-252/12, *Specsavers International Healthcare Limited and Others v Asda Stores Limited* indicates that

"Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours with the result that it has become associated in the mind of a significant portion of the public with that colour or combination of colours, the colour or colours which a third party uses in order to represent a sign alleged to infringe that trade mark are relevant in the global assessment of the likelihood of confusion or unfair advantage under that provision.

Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that the fact that the third party making use of a sign which allegedly infringes the registered trade mark is itself associated, in the mind of a significant portion of the public, with the colour or particular combination of colours which it uses for the representation of that sign is relevant to the global assessment of the likelihood of confusion and unfair advantage for the purposes of that provision."

2. The judgment concerns Community trade marks and proceedings under Community Trade Mark Regulation 207/2009. However, it is applicable, by analogy, to the interpretation of the corresponding provisions of the Trade Mark Directive, and therefore to the interpretation of national law implementing those provisions.
3. The CJEU judgment relates to the relevance of colour to a mark registered in black and white but used extensively in a particular colour or colours. It confirms that such use of colour may be taken into account as a relevant factor when considering the likelihood of confusion, detriment or unfair advantage being taken of the registered black and white mark.
4. The judgment also confirms that the established use of a later mark in a particular colour or colours may also be taken into account when assessing such matters in the context of infringement.
5. These findings may be applicable, by analogy, to opposition and cancellation proceedings before the Office based on grounds under s.5(2) and/or 5(3) of the Trade Marks Act 1994.
6. Unlike in infringement proceedings, the Registrar is required to consider the likelihood of confusion "in all the circumstances in which the mark applied for might be used if it were to be registered". See Case C-533/06, O2 Holdings v Hutchison 3G UK at paragraph 66. Consequently, where the earlier mark is registered in colour, or colour is established as forming part of the distinctive character of the earlier mark (even though it is registered in black and white), the **potential** or actual use of the later mark in the same colour(s) will be considered to be a relevant factor.
7. The colour(s) in which the later mark has or could be used will also be considered to be a relevant factor when assessing whether a later mark takes unfair advantage of an earlier mark of repute.

8. Because the Registrar's enquiry covers all normal and fair future potential uses of the later mark the Registrar takes the position that evidence of the existing use of the later mark in different colour(s) to those in which the earlier mark has been registered, or used, is not a relevant factor when assessing the likelihood of confusion.

9. In the Registrar's view, the CJEU's judgment does NOT mean that colour should be taken into account where the earlier mark has been registered in black and white but either i) has not been used or ii) has been used in colour(s), but the extent and consistency of such use is not such that the colour(s) formed part of the distinctive character of the earlier mark at the relevant date. In these circumstances, colour will be regarded as irrelevant. Only the marks on the register, or proposed to be added to the register, will be compared."

43. In the present proceedings, the earlier mark is registered in colour and is used in the colours in which it is registered. The particular arrangement of colours has been used by the applicant since 1973 and the distinctiveness of the earlier mark has been shown in evidence to have been enhanced through use to the highest level. Thus, the particular colours in the earlier mark have been established as forming part of the earlier mark's distinctive character.

44. It is, therefore, relevant to the consideration as to whether there exists a likelihood of confusion that the later mark has been used in the same colours as the earlier mark and in the same arrangement, for identical goods. I note that this fact led to confusion on the part of at least one UK customer, in July 2016, who said "It had your logo but where it should say Star Wars it say STAR WARS hall!" In fact, the set referred to (which I have shown an image of paragraph 12 of this decision) did not have the LEGO mark: it had a version of the contested mark in which LEPIN was larger than the Chinese characters, and above them. In the previous month, a customer noticed what he thought was a Lego set but when he looked 'closely', he realised it was by 'Lepin'.

45. Although the proprietor points out that its mark does not have any 'fixed color features', the *Specsavers* judgment shows that it is appropriate to consider potential or actual use of the later mark in the same colours where colour is established as forming part of the distinctive character of the earlier mark, as is the case in the present proceedings. Although the proprietor's registration covers, notionally, use in all colours, the use which the proprietor actually makes of its mark is 'paradigm' notional use. Mr Hollingworth set out some of the authorities which explain this point of law, in his skeleton argument:

"Premier Brands UK Ltd v Typhoon Europe Ltd [2000] FSR 767 at p. 779
(Neuberger J)

In my judgment, in the absence of argument or evidence to the contrary, the way in which the proprietor actually uses the mark can be said, at the very least *prima facie*, to be the paradigm case of its use in a normal and fair manner.

Open Country Trade Mark [2000] RPC 477 at p. 482 (Aldous LJ)

... no court would be astute to believe that the way that an applicant has used his trade mark was not a normal and fair way to use it, unless the applicant submitted that it was not. It does not follow that the way that the applicant has used his trade mark is the only normal and fair manner. However in many cases actual use by an applicant can be used to make the comparison.

18. Paragraph 11-088 of Kerly similarly observes:

If in fact it is known what use an applicant intends to make of their mark, then consideration of that use cannot be excluded. Evidence that an intended use is particularly likely to be confusing is helpful to an opponent, to prevent such use being dismissed as unfair or fanciful."

46. Therefore, in considering the likelihood of confusion, it is appropriate to take into account not only the colour claim and the part which the colours play in the distinctiveness of the earlier mark but also the fact that the proprietor's mark is used in the same colours. The same colours are arranged in the same way in the later mark as in the earlier mark, and the letters themselves are in white, in upper case, slanting forwards in both marks. These similarities form part of the global assessment.

47. In Case T-398/16, *Starbucks Corp v EUIPO*⁶, the GC considered the application shown below for 'services for providing drinks':



The earlier mark which formed the basis of the opposition under the Article 8(1)(b) of the EU Trade Mark Regulations⁷, equivalent to section 5(2)(b) of the UK Act, was:



This earlier mark is registered for 'café, cafeteria, snack bar, coffee bar and coffee house' services, which were found to be identical to the services of the application. The Court reviewed the similar structure of the marks and stated:

"52. Secondly, the similarity linked to the general appearance of the signs at issue is strengthened, first, by the use of the same colours, black and white, which highlight the central element, the band which surrounds it and the elements reproduced in that band, and, secondly, by the use of the same font for the word elements 'starbucks coffee' and 'coffee rocks'. That equivalence, which is also shown by the positioning of the various abovementioned

⁶ European Union Intellectual Property Office

⁷ European Parliament and Council Regulation No 207/2009, now No 2017/1001.

elements, contributes towards giving the impression that the marks at issue are based on the same structure.

53 Furthermore, as the applicant observes, the trade mark application seeks protection in respect of a composite figurative sign which does not refer to any colour in particular. That sign's user could therefore, as EUIPO acknowledged at the hearing, use it in the colour of its choice, including in the black, green and white shades of the earlier EU trade marks No 5671938 and No 689786 and the earlier United Kingdom trade mark. The protection of a trade mark which does not refer to any colour in particular is extended to all colour combinations as from the time when the mark is registered (see, to that effect, judgment of 18 June 2009, *LIBRO v OHIM* — *Causley (LIBRO)*, T-418/07, not published, EU:T:2009:208, paragraph 65)."

48. As I have already mentioned, the proprietor's mark not only notionally covers all colours, but is actually used in the same colours as the applicant's mark in a highly similar structural way. This includes the curved, coloured outline to the letters in each mark.

49. Bearing in mind the identical goods in play, the no more than average level of attention during the purchasing process, the huge level of distinctiveness of the earlier mark and the strong structural similarities between the marks in terms of colour, I find that there is a likelihood of confusion between the marks. It is the case that sometimes the eye has a tendency to see what it expects to see⁸ when a mark is extremely well known, leading to the assumption that the word in the contested mark is LEGO. In this scenario, there would be indirect confusion i.e. the average consumer notices the Chinese characters so knows that the marks are not the same, but assumes that the later mark is a variation on the earlier mark, such as a Chinese sub-brand or a co-brand. An alternative form of indirect confusion is also likely in that the perception will be that the goods are, in some way, a 'Chinese' version of the applicant's goods because of the highly similar colour structure on identical goods⁹.

⁸ See, for example, *Aveda Corporation v Debur India Limited* [2013] EWHC 589 (Ch).

⁹ There is some evidence of this in the customer feedback evidence.

with both words beginning with L.E. and the additional Chinese characters, even though it is recognised that the words are different.

50. The ground of invalidation succeeds under section 5(2)(b) of the Act.

Section 5(3) of the Act

51. Section 5(3) states:

"(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark."

52. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, [1999] ETMR 950, Case 252/07, *Intel*, [2009] ETMR 13, Case C-408/01, *Adidas-Salomon*, [2004] ETMR 10 and Case C-487/07, *L'Oréal v Bellure* [2009] ETMR 55 and Case C-323/09, *Marks and Spencer v Interflora*. The law appears to be as follows.

a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls

the earlier mark to mind; *Acidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact on the earlier mark; *L'Oréal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oréal v Bellure*).

53. The conditions of section 5(3) are cumulative. Firstly, the applicant must show that its mark is similar to the proprietor's mark. Secondly, that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the later mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

54. As to reputation of the earlier mark, it follows from my earlier findings that the earlier mark satisfies the requirement of a reputation in relation to games and playthings, especially so in relation to construction toys for which the earlier mark has an enormous level of reputation in the UK, which is enough for a substantial reputation in the EU¹⁰, as the earlier mark is an EUTM. The evidence shows, in any case, that the earlier mark has a substantial reputation across the EU, but it is not necessary for present purposes to summarise the EU-wide evidence in view of the enormous UK reputation.

¹⁰ *PAGO International GmbH v Troitnitch registrierte Genossenschaft mbH*, case C-301/07.

55. In relation to the requirement of similarity between the marks, I note from the *Specsavers* judgment and the TPN that the colours in which a later mark has been used is relevant to the consideration of whether that mark takes unfair advantage of an earlier mark of repute which is known for those colours to a significant part of the relevant public. Taking into account the strength of the reputation and distinctiveness associated with the earlier mark and the identical or almost identical use of colour, together with the (relatively) limited degree of similarity between the marks (considered as wholes) in relation to identical goods, the earlier mark will be called to mind. I find that the necessary 'link' is established.

56. The next step in the enquiry is to assess whether any of the three pleaded types of damage will arise. The opponent claims that the applicant's mark takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the earlier trade mark. Detriment to the distinctive character or repute is damage done to the earlier mark which means that the relevant public is less likely to buy the goods or services of the earlier mark (because its distinctive character is eroded or its reputation is degraded).

57. Unfair advantage is different. It has no effect on the consumers of the earlier mark's goods and services. Instead, the taking of unfair advantage of the distinctive character or reputation of an earlier mark means that consumers are more likely to buy the goods and services of the later mark than they would otherwise have been if they had not been reminded of the earlier mark. Essentially, the later mark will get a marketing or commercial 'leg-up' because the link with the earlier, reputed, mark means that the owner of the later mark does not have to put as much effort into making the later mark known because it already feels familiar or sends a message to consumers as to what they can expect. I have already found that there is a likelihood of confusion between the marks, which means that there is automatic unfair advantage: the proprietor is gaining custom because of the confusion.

58. However, in case I am wrong about there being a likelihood of confusion, I will go on to assess the potential types of damage on the assumption that there is no likelihood of confusion, beginning with the unfair advantage claim.

Arnold J. said:

"80. The arguments in the present case give rise to two questions with regard to taking unfair advantage. The first concerns the relevance of the defendant's intention. It is clear both from the wording of Article 5(2) of the Directive and Article 9(1)(c) of the Regulation and from the case law of the Court of Justice interpreting these provisions that this aspect of the legislation is directed at a particular form of unfair competition. It is also clear from the case law both of the Court of Justice and of the Court of Appeal that the defendant's conduct is most likely to be regarded as unfair where he intends to benefit from the reputation and goodwill of the trade mark. In my judgment, however, there is nothing in the case law to preclude the court from concluding in an appropriate case that the use of a sign the objective effect of which is to enable the defendant to benefit from the reputation and goodwill of the trade mark amounts to unfair advantage even if it is not proved that the defendant subjectively intended to exploit that reputation and goodwill."

60. The proprietor has been entirely silent about its intentions, which means that I can infer what its intentions were based on surrounding circumstances. The evidence which the applicant has provided showing how the proprietor's mark is used leaves me in no doubt that the proprietor did subjectively intend to exploit the applicant's reputation in the earlier mark. The highly similar arrangement of colours in the mark as used, together with its positioning on the packaging and the almost identical pictures of the goods (and references such as STAR VNRS, in identical fonts), are surrounding circumstances to be taken into account. These factors point strongly towards the conclusion that the proprietor intended not only to go head to head with the applicant on the market, but also intended to benefit from the power of attraction, the reputation and the prestige of the earlier mark and to exploit, without paying any financial compensation, the marketing effort expended by the applicant. The proprietor would find it easier to sell its goods (and has found it easier, as borne out by the customer comments in the evidence) because of the familiarity brought about by the enormous reputation of the applicant's mark in relation to identical goods. That enormous reputation has been the result of many years of effort by the

applicant in building its reputation for a quality and innovative product, enjoying a consistently high level of turnover and spending a consistently high amount on advertising. The proprietor has benefitted from this in a clear case of free-riding.

61. The claim to unfair advantage succeeds.

62. It is only necessary that one of the heads of damages succeeds. However, I will briefly mention the other two types of damage: detriment to distinctive character, and detriment to reputation of the earlier mark. Detriment to distinctive character, also known as 'dilution', was described by the CJEU in *L'Oréal v Bellure*:

"39. As regards detriment to the distinctive character of the mark, also referred to as 'dilution', 'whittling away' or 'blurring', such detriment is caused when that mark's ability to identify the goods or services for which it is registered is weakened, since use of an identical or similar sign by a third party leads to dispersion of the identity and hold upon the public mind of the earlier mark. That is particularly the case when the mark, which at one time aroused immediate association with the goods or services for which it is registered, is no longer capable of doing so (see, to that effect, *Intel Corporation*, paragraph 29)."

63. As set out above, one of the applicant's customers commented "I am a collector and seller of new Lego Parts and I know that when I purchase official Lego this is quality assured, but from what I see Lepin could undermine this and flood the market with cheap copy's [sic]". This seems to me to be evidence of dilution or whittling away of the earlier mark's ability to identify the goods of the registered mark, as the earlier mark will stand out less from the crowd. There is also customer evidence that loyal fans of the applicant's goods identified by its earlier mark have become annoyed (in one case, incensed) at the perception that the applicant is not doing 'enough' to combat what they see as an undermining of the LEGO brand. That perception could also lead to dispersion of the identity and hold upon the public mind of the earlier mark.

64. Even without this customer evidence, the earlier mark is unique and, as the CJEU stated in *Intel*, the more unique a mark is, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character. The surrounding circumstances shown in the evidence include the near-identical packaging being used on identical goods and I have already made findings about the similarities in the colour arrangements in both marks. I find that the earlier mark's ability to arouse immediate association with the goods will be damaged and that the claim to detriment to distinctive character succeeds.

65. The CJEU described detriment to repute in the following way in *L'Oréal v Bellure*:

"40. As regards detriment to the repute of the mark, also referred to as 'tarnishment' or 'degradation', such detriment is caused when the goods or services for which the identical or similar sign is used by the third party may be perceived by the public in such a way that the trade mark's power of attraction is reduced. The likelihood of such detriment may arise in particular from the fact that the goods or services offered by the third party possess a characteristic or a quality which is liable to have a negative impact on the image of the mark."

66. Although Mr Hollingworth submitted that 'tarnishment' is commonly encountered in the context of goods or services carrying (in some way) negative associations, he also contended that the evidence shows that the proprietor has been using its mark in respect of goods of a poor or lower quality than those of the applicant and that the ground should succeed on this basis. Mr Hollingworth referred me to the decision of Ms Anna Carboni, sitting as the Appointed Person in *Unite the Union* [2014] RPC 14:

"I do not exclude the possibility that, where an established trading entity applies to register a mark that it has already been using for the goods or services to be covered by the mark, in such a way that the mark and thus the trader have already acquired some associated negative reputation, perhaps for poor quality goods or services, this fact might be taken into account as relevant "context" in assessing the risk of detriment to repute of an earlier trade mark... But I would hesitate to decide an opposition on that basis

without having had confirmation from a higher tribunal that it would be correct to take such matters into account."

67. Mr Hollingworth submitted that whilst Ms Carboni said that she would hesitate to decide an opposition on that basis without having had confirmation from a higher tribunal that it would be correct to take such matters into account, he considered that the present case is much clearer.

68. In *Champagne Louis Roederer v J Garcia Carrion S.A. and Others* [2015] EWHC 2760 (Ch), the earlier mark, CRISTAL, was known as an exclusive and very expensive champagne, whilst the later mark, CRISTALINO, was used in relation to Spanish cava, a much more inexpensive drink. Amongst the claims made was one of detriment to repute, or tarnishment, based upon the fact that the defendant's cava was cheaper. There was no evidence that the cava was good or bad *per se*. Mrs Justice Rose said:

"The case law on this type of injury is less well developed than the other two types. It appears to me that it would be a step forward in the law to find that tarnishment is made out merely by using a sign on a product which is cheaper and more ordinary than the product to which the mark is attached. I do not need to take any such step in order to decide this case and I therefore make no finding on the issue of tarnishment."

69. I recognise that the applicant's claim in the present proceedings is based on evidence that the proprietor's goods are of lower quality than its own, which is a different issue to that in *CRISTALINO*. However, as I do not need to decide the point because I have found, in addition to the section 5(2)(b), that the section 5(3) ground succeeds under unfair advantage and detriment to distinctive character, I will make no finding here, particularly following the observations of the Appointed Person and Rose J.

70. The ground succeeds under section 5(3) of the Act.

Section 5(4)(a)

71. Section 5(4)(a) states:

"A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

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

(b)...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark."

72. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court conveniently summarised the essential requirements of the law of passing off as follows:

"55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Coiman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs."

56 In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

73. Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 369 it is noted (with footnotes omitted) that:

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

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

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

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

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

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

74. As the proprietor has been completely silent about its use, I will start from the premise that the relevant date is the date on which the contested application was filed, 8 June 2017. In any event, even if I were to take into account the applicant's statements about the proprietor's use, it would not affect the outcome because the applicant's use dates from 1973; there is nothing to suggest that the proprietor's use goes back anywhere near this far. The applicant clearly has a very substantial level of goodwill in relation to its earlier mark for construction toys, which represents its best case because these are identical goods to those of the proprietor's registration. It is unnecessary to make findings of goodwill about the other goods and services relied upon under this ground.

75. The proprietor has said nothing about the adoption of its mark. It has also not responded to the applicant's evidence which shows that the proprietor's packaging carries the same pictures and get-up as the applicant's comparable goods. It is not necessary for a finding of passing off that there was an intention to deceive. However, these surrounding circumstances to the proprietor's actual use of its mark, in the same colour arrangement as the applicant's mark, appear to me to point strongly to an intention to benefit from the applicant's vast amount of goodwill. The House of Lords stated in *Office Cleaning Services v. Westminster Office Cleaning* (1964) 63 RPC 39 that:

"Confusion innocently caused will yet be restrained. But if the intention to deceive is found, it will be readily inferred that deception will result. Who knows better than the trader the mysteries of his trade?" (at p. 42 per Lord Simonds).

in *Spaccavers v Asda* [2012] EWCA Civ 24, Kitchen LJ cited *Slazenger & Sons v Feltham & Co* (1889) 6 R.P.C. (Lindley J):

"It has long been established that if it is shown that a defendant has deliberately sought to take the benefit of a claimant's goodwill for himself the court will not "be astute to say that he cannot succeed in doing that which he is straining every nerve to do."

76. The proprietor's use of its mark, which is paradigm notional use, is in the same colours and the same structural colour arrangement as the earlier mark, incorporating a relatively short word which also begins with LE, on identical goods.

77. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt LJ stated that:

"There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

"is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]'"

78. I find that that at the relevant date the applicant was entitled to have prevented the use of the later mark under the law of passing off because such use would have been damaging to the applicant's goodwill. Damage could arise in a number of ways, such as, confusion by purchasers confronted by both parties' goods in a purchasing process entailing no more than an average level of attention, leading to diversion of trade; a belief by the public that the goods or services offered by the applicant were supplied by or under licence from the opponent; damage caused by inferior quality goods; or other types of damage, as articulated by Warrington LJ in *Ewing v Buttercup Margarine Company, Limited*, [1917] 2 Ch. 1 (COA):

"To induce the belief that my business is a branch of another man's business may do that other man damage in various ways. The quality of goods I sell, the kind of business I do, the credit or otherwise which I enjoy are all things which may injure the other man who is assumed wrongly to be associated with me."

79. The ground under section 5(4)(a) of the Act succeeds.

Overall outcome

80. The application for a declaration of invalidity succeeds in full. Under section 47(6) of the Act, the registration is deemed never to have been made.

Costs

81. The applicant has been successful and is entitled to a contribution towards its costs. Mr Hollingworth said that the applicant was content for the award to be based on the scale¹¹, but that the award should be towards the top of the scale. The reason for this was that the proprietor put the applicant to proof of use of its mark. As it happens, the applicant originally relied upon a much wider range of goods and services covered by its earlier mark, but restricted the scope of its action to a reliance on games and playthings at the point when it filed its evidence. In a letter from the applicant which accompanied its evidence, dated 26 June 2018, the applicant said that it wished to reduce the width of the goods and services relied upon to reduce the volume of evidence required, which would reduce costs. At no point did the proprietor withdraw its request for proof of use or make any admissions regarding the level of reputation of the earlier mark. I consider this to have been unreasonable in view of the enormous fame of the applicant's mark, at least in relation to construction toys, which is a notorious fact and, at the very least, a fact easily discovered with basic research. Some of the applicant's evidence went to the actions it has taken elsewhere against the proprietor. These reflect the applicant's

¹¹ Published in Tribunal Practice Notice 2/2016.

own view of whether the marks are confusing, which cannot have a bearing on my decision. Taking everything into account, I award costs to the applicant as follows:

Official fee for the application	£200
Filing the application and considering the counterstatement	£400
Filing evidence	£1700
Preparation for and attendance at a hearing	£800
Total	£3100

82. I order Shantou Chenghai District Longjun Toys Factory Co., Ltd to pay to LEGO Juris A/S the sum of £3100. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.

19th March 2019

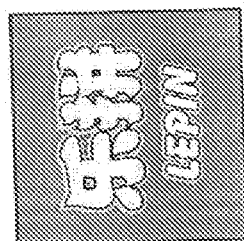
J Pike

Judi Pike
For the Registrar,
the Comptroller-General

O/142/19

LEGEA PRIVIND MĂRCILE DIN 1994

CU PRIVIRE LA ÎNREGISTRAREA NR. 3236070 DEȚINUTĂ DE
SHANTOU CHENGAI DISTRICT LONGJUN TOYS FACTORY CO., LTD
PENTRU MARCA

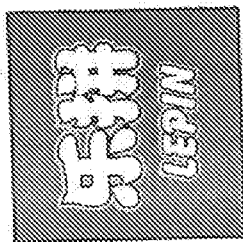


DIN CLASA 28

ȘI
CEREREA DE DECLARARE A NULITĂȚII ACESTEIA
CU NUMĂRUL 501966
DE CĂTRE LEGO JURIS A/S

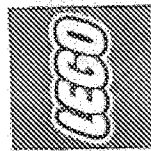
Fond

1. La 8 iunie 2017, Shantou Chenghai District Longjun Toys Factory Co., Ltd ("titularul") a depus cererea de înregistrare a mărcii numărul 3236070 pentru marca



pentru Jucării; Blocuri [jucării] de construcții; Case pentru păpuși; Camere pentru păpuși; Vehicule de jucărie; Vehicule de jucărie controlate prin radio; Modele de jucării; Puzzle-uri; Controlere pentru jucării; Roboți de jucărie, din clasa 28. Marca a obținut înregistrarea la 1 septembrie 2017.

2. La 6 februarie 2018, LEGO Juris A/S („solicitantul”) a solicitat declararea nulității înregistrării în temeiul art. 47 alin.(2) din Legea privind mărcile din 1994 („Legea”), pe baza faptului că a fost înregistrată contrar art. 5 alin. (2) lit. (b), art. 5 alin.(3) și art.5 alin. (4) (a) din Lege. Motivele conform art. 5 alin. (2) lit. (b) și art. 5 alin.(3) se bazează pe marca europeană anterioară 2829463 a solicitantului:



3. Această marcă a fost depusă la 28 august 2002, înregistrată la 7 ianuarie 2004 și revendică culoriile roșu, alb, negru și galben. Solicitantul se bazează pe „Jocuri și jucării din clasa 28”, în legătură cu care a făcut o declarație de utilizare. Solicitantul susține că există probabilitatea de confuzie conform art. 5 alin.(2) lit.(b) și art.5 alin.(3), iar utilizarea mărcii ulterioare ar conferi titularului un avantaj nedrept și ar afecta caracterul distinctiv și reputația mărcii solicitantului. Solicitantul afirmă că marca ulterioară a fost utilizată pentru mărfuri de calitate proastă.

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4. În conformitate cu art. 5 alin. (4) lit. (a) din Lege, solicitantul se bazează pe utilizarea unui semn corespunzător mărcii sale înregistrate, prezentat mai sus, și afirmă că a fost folosit pentru prima dată în Marea Britanie în 1973. Solicitantul afirmă că anterior dreptul a fost folosit în legătură cu „Jucării (inclusiv blocuri de construcții, modele de jucării, case pentru păpuși, vehicule de jucărie, vehicule de jucărie controlate radio, puzzle-uri și controlere pentru jucării și roboți de jucărie), jocuri video, filme, programe TV, parcuri tematice, îmbrăcăminte și accesorii, cărți și alte publicații, produse de papetărie, imagini, articole de bucatărie, huse pentru telefoane mobile și iPod-uri, articole de ceasornicărie și servicii educaționale.” Solicitantul susține că reputația sa valoroasă și bunăvoința îi dă dreptul să împiedice utilizarea mărcii ulterioare în conformitate cu legea privind utilizarea abuzivă a unei denumiri.

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42. Notificarea de practică a tribunalului („NPT”) 1/2014 este relevantă, deoarece se referă la aplicabilitatea hotărârii CJUE în *Specsavers International Healthcare și alții împotriva Asda Stores Limited*, cauza C-252/12, la cauzele examinate de Grefier conform art.5 alin.(2) lit. (b) și art.5 alin.(3) din Lege, cu privire la culoare:

„1. Hotărârea Curții de Justiție a Uniunii Europene („CJUE”) în cauza C-252/12, *Specsavers International Healthcare Limited și alții împotriva Asda Stores Limited* indică că:

„Articolul 9 alin. (1) lit. (b) și (c) din Regulamentul nr. 207/2009 trebuie interpretat în sensul că atunci când o marcă comunitară nu este înregistrată în culori, dar titularul a utilizat-o pe larg într-o anumită culoare sau o combinație de culori în urma cărora s-a asociat, în mintea unei părți semnificative a publicului, cu acea culoare sau combinație de culori, culoarea sau culorile pe care o terță parte le folosește pentru a reprezenta un semn care se presupune că ar încălca marca respectivă sunt relevante în evaluarea globală a probabilității de confuzie sau un avantaj nedrept în fața acestei dispoziții.

Articolul 9 alin.(1) lit. (b) și (c) din Regulamentul nr. 207/2009 trebuie interpretat în sensul că faptul că terța parte care folosește un semn ce ar fi încălcat marca înregistrată este înșuși asociat, în mintea unei părți semnificative a publicului, cu culoarea sau combinația particulară de culori pe care o folosește pentru reprezentarea acelui semn, este relevant pentru evaluarea globală a probabilității de confuzie și a avantajului nedrept în sensul acestei dispoziții."

2. Hotărârea privește mărcile și procedurile comunitare în temeiul Regulamentului privind mărcile comunitare Nr.207/2009. Cu toate acestea, se aplică, prin analogie, interpretării dispozițiilor corespunzătoare din Directiva privind mărcile și, prin urmare, interpretării dreptului național care implementează aceste dispoziții.

3. Hotărârea CJUE se referă la relevanța culorii pentru o marcă înregistrată în alb și negru, dar folosită pe larg într-o anumită culoare sau culori. Aceasta confirmă faptul că o astfel de utilizare a culorii poate fi luată în considerare ca un factor relevant atunci când se ia în considerare probabilitatea de confuzie, care este un detrimant sau avantaj nedrept al mărcii înregistrate alb-negru.

4. Hotărârea confirmă, de asemenea, faptul că utilizarea stabilită a unei mărci ulterioare într-o anumită culoare sau culori poate fi, de asemenea, luată în considerare atunci când se evaluează aceste aspecte în contextul încălcării.

5. Aceste constatări pot fi aplicabile, prin analogie, procedurilor de opoziție și anulare examinate de Oficiu pe baza motivelor conform art. 5 alin.(2) și/sau art.5 alin.(3) din Legea privind mărcile din 1994.

6. Spre deosebire de procedurile de încălcare, registratorul este obligat să ia în considerare probabilitatea de confuzie în toate circumstanțele în care marca solicitată ar putea fi folosită dacă ar fi înregistrată". Vezi cauza C-533/06, O2 Holdings împotriva Hutchinson 3G UK la alineatul 66. În consecință, atunci când marca anterioară este înregistrată în culori sau culoare, aceasta este stabilită ca parte a caracterului distinctiv al mărcii anterioare (chiar dacă este înregistrată în alb și negru), utilizarea potențială sau efectivă a mărcii ulterioare în aceeași culoare (culori) va fi considerată a fi un factor relevant.

7. Culoarea (culorile), în care marca ulterioară a fost sau ar putea fi utilizată, va fi, de asemenea, considerată a fi un factor relevant atunci când se evaluează dacă o marcă ulterioară are un avantaj nedrept și profită de o marcă anterioară de renume.

8. Întrucât ancheta registratorului include toate utilizările potențiale normale și corecte ale mărcii ulterioare, registratorul consideră că dovada utilizării existente a mărcii ulterioare în diferite culori cu cele în care marca anterioară a fost înregistrată sau utilizată, nu este un factor relevant atunci când evaluăm probabilitatea de confuzie.

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9. În opinia Registratorului, hotărârea C.JUE NU înseamnă că trebuie luată în considerare culoarea în cazul în care marca anterioară a fost înregistrată în alb și negru, dar i) nu a fost utilizată sau ii) a fost utilizată în culori, dar amplasarea și consecvența unei astfel de utilizări a culorii (culorilor) nu face parte din caracterul distinctiv al mărcii anterioare la data relevantă. În aceste condiții, culoarea va fi considerată irelevantă. Doar mărcile din registru vor fi comparate sau vor fi propuse pentru a fi adăugate în registru."

80. Cererea de declarare a nulității este completă. În conformitate cu articolul 47 alin. (6) din Lege, înregistrarea se consideră că nu a fost făcută niciodată.

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The undersigned, **Furdui Tatiana**, authorized Subsemnata, **Furdui Tatiana**, translator in English certify the exactness of the autorizat în limbi moderne certifice exactitatea translation with the original text of the document, traducerii cu textul înscrisului în original, care a in witness whereof, I apply my signature on fost vizat de mine la data de 20.08.2019

S-a înregistrat cu Nr. 444

20.08.2019

Furdui Tatiana

Furdui Tatiana

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County Commissioner

At Large

Stacy M. Smith

Stacy M. Smith

STACY M. SMITH
COUNTY COMMISSIONER
STACY M. SMITH



Republic of Moldova

General Power of Attorney

The undersigned

Republica Moldova

Procură Generală

Subsemnatul **AGEPI**

2014 AUG 22

LEGO Juris A/S

hereby authorizes

autorizează

BIROUL BREVETMARCSERVICE

personally

in persoana

Alexandr L. BABAC (Reg. No. 1); **Galina I. JENICICOVSCAIA** (Reg. No. 3);
Ludmila L. ANDRIES (Reg. No. 28); **Ghelenia I. JENIKOVSKAIA** (Reg. No. 39);
Valentin G. NEKLIUDOV (Reg. No. 91); **Elena V. ASEEVA** (Reg. No. 92);
Tatiana D. SARATEANU (Reg. No. 108); **Tatiana C. LAZICOV** (Reg. No. 122)

Radu JIGAU Reg. No. 55, avocat/barrister, domiciled: mun. Chisinau, str. Schinoasa - Vale, 62/A
(identity bulletin A 01057083, ID no. 0980610011530)

to represent our interests in the field of intellectual property, before all governmental bodies and authorities of the Republic of Moldova, including the State Agency for Intellectual Property (AGEPI) and Courts of different jurisdiction, Customs Services, as well as in the relationship with natural persons and legal entities of the Republic of Moldova.

In order to carry out the aforesaid obligations, Biroul «BrevetMarcService» S.R.L. has been granted the rights to accomplish all the necessary actions, including, without limitation: to file applications for registration of patents, short-term patents, trademarks, appellations of origin and industrial designs, objects of copyright, to file requests for renewals, to file requests for registration of assignments, agreements for registration of licenses and for registration of franchise, and for registration of co-ownership, to file responses, oppositions and requests, to withdraw applications, file requests for invalidation and cancellation of a registration, to obtain acts, documents including patents, short-term patents, certificates of registration in respect of intellectual property matters, to sign and bring actions, declarations to Courts, to decline claims in whole or in part, to make amendments in the basis and subject of actions, to recognize claims, to use mediation, to renounce mediation, to conclude amicable settlements, to delegate their power to third parties, to conclude and sign agreements with respect to provision of legal services, to hire lawyers for conducting judicial proceedings, to appeal against decisions including judgments of the Court, to carry out actions in respect of execution of decisions, and carry out any other actions in the interests of the principal.

reprezentarea intereselor noastre în domeniul proprietății intelectuale în toate organele de stat, organizațiile, instituțiile din Republica Moldova, inclusiv în Agenția de Stat pentru Proprietatea Intelectuală (AGEPI) și în toate instanțele judecătorești, Serviciul Vamal, precum și în relațiile cu persoanele fizice și juridice din Republica Moldova.

Pentru exercitarea funcțiilor sale, Biroul «BrevetMarcService» S.R.L. primește dreptul a efectua toate acțiunile necesare, inclusiv următoarele: înaintarea cererilor cu privire la înregistrarea invențiilor, invențiilor de scurtă durată, mărcilor, denumirilor de origine a produselor, a modelelor și a desenelor industriale, a obiectelor de drept de autor, cu privire la reînnoirea termenului de înregistrare a acestora, precum și cu privire la înregistrarea contractelor de cesiune drepturilor, de licență și de francising, de co-proprietate, contestarea deciziilor, revocarea cererii de către solicitant, anularea obiectului de proprietate intelectuală, primirea actelor, documentelor, inclusiv a brevetelor, brevetelor de scurtă durată, certificatelor de înregistrare a obiectelor de proprietate intelectuală, semnarea și depunerea cererilor de chemare în judecată, renunțarea totală sau parțială la pretențiile din acțiune, modificarea temeiului și obiectului acțiunilor judiciare, recunoașterea acțiunilor judiciare, recurgerea la mediere, renunțarea la mediere, încheierea tranzacțiilor de împăcare, încheierea transmiterea împuternicirilor către alte persoane, încheierea și semnarea contractelor privind prestarea serviciilor juridice, angajarea avocaților pentru conducerea procedurilor judiciare, atacarea hotărârilor judecătorești, exercitarea acțiunilor vizând executarea hotărârilor, exercitarea altor acțiuni în interesul mandantului.

The present Power of Attorney is valid for 3 (three) years following the date of its execution and can be revoked at any time.

Prezenta procură este valabilă în decurs de 3 (trei) ani de la data semnării și poate fi revocată în orice moment.

Mette M. Andersen
Corporate Counsel

LEGO Juris A/S
7190 Billund, Denmark
(Name /address) (Numele și adresa)

Kristi Hougaard
Corporate Counsel

(Signature: print full name and title) (Semnătura: numele dactilografat clar și titlul persoanei subsemnate)

BILLUND

31

MAY

(Place: date) (Locul, data)

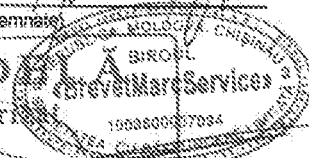
Stamp (Seal)

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LEGO Juris A/S

Mandatar Autorizat

V. Nekliudov



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2. has been signed by er underskrevet af	Ina Anette Lauritzen		
3. acting in the capacity of i egenskab af	Notary Public Notar		
4. bears the seal/stamp of er forsynet med segl/stempel af	The Court in Horsens Retten i Horsens		
Certified Attesteret			
5. at i	Copenhagen København	6. the den	13 Jun 2018 13 jun 2018
7. by af	Ministry of Foreign Affairs of Denmark Udenrigsministeriet		
8. No nr.	F57369E2		
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