BL O/0482/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION DESIGNATING THE UK NO 1748563

IN THE NAME OF SECHE ENVIRONNEMENT TO REGISTER THE FOLLOWING TRADE MARK

SPEICHIM

IN CLASSES 1, 35, 40 AND 42

AND AN OPPOSITION THERETO UNDER NUMBER 444704 BY SIPCHEM INNOVENT SA

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF L.A. BAILEY (O/1138/25) DATED 4 DECEMBER 2025.

DECISION

Introduction

1. This is an appeal by Sipchem Innovent SA ("**Appellant**") from decision O/1138/25 of Ms L.A. Bailey ("**Decision**") concerning its opposition to the application by Seche Environnement ("**Respondent**") for extension of protection of International Trade Mark WO1748563 ("**Application**") to the UK.

2. The Application is for the mark shown below and was filed on 17 May 2023, claiming a priority date of 18 November 2022. It was published on 15 September 2023.

SPEICHIM

3. Protection was sought for the following goods and services:

Class 1 – *Chemicals for the pharmaceutical industries; chemicals for the veterinary industries; chemicals for the cosmetic industries; chemicals for the agri-food industries; chemicals for the treatment of waste; chemical distillates; solvents for industrial use for manufacturing processes; chemicals for the petrochemical industries*.

Class 35 – *Retail or wholesale services for chemicals; commercial intermediary services concerning chemicals*.

Class 40 – *Chemical treatment of waste; reclamation of industrial waste through the implementation of chemical processes; services for the purification of chemicals; distillation services; regeneration of solvents; recycling of solvents; purification of solvents*.

Class 42 – *Chemical engineering services, namely, engineering services relating to the design of industrial manufacturing processes for chemicals; technical evaluations*

concerning design (engineers' services); scientific research; technical research; conducting of technical project studies.

4. On 15 December 2023 the Appellant opposed the Application on the basis of s. 5(2)(b) of the Trade Marks Act 1994 ("**the Act**"). The Appellant relied upon its earlier UK Trade Mark No. UK801470136 ("**Earlier Mark**"), details of which are as follows:

Mark	**Filing date**	**Registration date**	**Goods and services relied upon**
SIPCHEM	08/04/2019	08/11/2019	**Class 1**: *Chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics*. **Class 35**: *Retail and wholesale services*.

5. The Appellant contended that there is a likelihood of confusion on the basis that the marks are similar, and the goods/services are either identical or highly similar.

6. The Respondent filed a counterstatement denying the claim made. The Appellant filed evidence. Neither party requested a hearing in the Registry, and both filed submissions in lieu.

7. Ms L.A. Bailey for the Registrar rejected the opposition. On 19 January 2026 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

The Hearing Officer's decision

8. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):

    a. The average consumer is likely to be a member of the professional public, paying a high level of attention during the purchasing process due to the specialist nature of the goods/services on offer. Visual considerations are likely to dominate the selection process, as the goods/services are most likely to be selected following perusal of physical signage, although an aural component cannot be discounted, given that discussions may be had with sales representatives prior to purchase;

    b. The marks are visually similar to a medium degree, aurally similar to between a low and medium degree and conceptually neutral;

    c. The Earlier Mark has a high degree of inherent distinctive character;

    d. The goods/services in question range from similar to a low degree, through similar to a high degree, to identical;

    e. There is no likelihood of direct confusion even on identical goods/services. As for indirect confusion, none of the categories set out in *L.A. Sugar* apply and there is no other basis upon which the average consumer would conclude that there is an economic connection between the marks.

    f. The opposition therefore failed in its entirety.

Grounds of Appeal

9. The Appellant's Grounds of Appeal are as follows:

   a. **Failure to take evidence into account**: The Hearing Officer demonstrably misunderstood, and demonstrably failed to take into account, relevant evidence, namely the witness statement of Eric Bouchardy dated 20 December 2024;

   b. **Incorrect approach to average consumer's level of attention**: The Hearing Officer took an incorrect approach to the level of attention to be attributed to the average consumer because i) she disregarded the fact that for at least some of the goods and services the average consumer could be an ordinary member of the public, and ii) even where the average consumer was rightly considered to be a professional, the degree of attention should not be taken to be high;

   c. **Failure to apply interdependence principle**: The Hearing Officer failed to apply the interdependence principle correctly;

   d. **Lack of cogency in conclusion**: The Hearing Officer's conclusion that although the average consumer might have the opponent's mark brought to mind by the applicant's mark no confusion would be likely to result lacked cogency.

10. The Appellant's Counsel, Jonathan Hill, expanded upon the above in his skeleton argument and at the hearing, and I set out below further details as are necessary to understand my overall conclusions. The Respondent filed a Respondent's Notice and its Counsel, Charlotte Blythe, filed a skeleton argument and made oral submissions at the hearing. I thank both Counsel for their clear written and oral submissions, which I found very helpful.

Standard of review

11. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

> "94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:
>
> > (i) The trial is not a dress rehearsal. It is the first and last night of the show.
> >
> > (ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.

(iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation.""

12. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

"24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS* O/039/21), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);

iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court

was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.

v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).

vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).

ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).”

13. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 “It is common ground that,

in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable".

14. I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) Failure to take evidence into account

15. This ground of appeal relates only to the goods/services held by the Hearing Officer to be similar to those in the Earlier Mark. It does not relate to goods/services held to be identical. At the hearing, Counsel for the Appellant accepted that if the appeal is unsuccessful in relation to identical goods/services, this ground cannot succeed.

16. Accordingly, I shall first address the other grounds of appeal, and return to this ground only if the appeal succeeds in relation to identical goods/services.

(2) Incorrect approach to average consumer's level of attention

17. The Hearing Officer said at §42:

> "I consider that the average consumer of the goods/services is likely to be a member of the professional public. I have no evidence before me regarding the cost or frequency of purchase of the goods/services. However, I agree with the applicant that a high level of attention would likely be paid during the purchasing process due to the specialist nature of the goods/services on offer. The opponent has stated that their goods/services are subject to regulation within their industry, and I consider that this supports the fact that a high level of attention would likely be paid, as the average consumer would want to ensure that any purchase conformed with regulation".

18. The Appellant contends that the Hearing Officer fell into error in two ways. First, some of the goods and services (such as *chemicals for treatment of waste* in class 1) are not solely for professional purchasers, and she should have considered the perspective of an ordinary member of the public as well as the professional. Secondly, even where the average consumer is a professional purchaser, the level of attention is not necessarily high, given that the goods and services i) need not be high priced, ii) can consist of commodities or standardised services, and iii) are likely to be chosen for technical compliance, which will generally turn on certification and technical documentation rather than confidence over trade origin.

19. With regard to the first alleged error, the first difficulty for the Appellant is that the Hearing Officer's decision was in line with the Appellant's own submissions before her. In its final written submissions of 7 April 2025 the Appellant said "raw materials are unlikely to be purchased by the general public and the average consumer is likely to be a professional or business in the manufacturing sector". It cannot be said that the Hearing Officer made an error of principle in adopting the position contended by both parties below, and it is too late now for the Appellant to advance a different and inconsistent case on appeal.

20. Secondly and in any event, even if the average consumer for some of the goods and services is a member of the general public, the Hearing Officer's reasoning for the high level of attention paid would apply equally to a member of the general public. That is because even a non-professional consumer would exercise care given the specialist/regulatory context of the goods and services in question.

21. As for the second alleged error, it was for the Hearing Officer to determine the level of attention, based on the evidence and submissions before her. Her reasoning in §42 is sound and the conclusion she reached was one that was open to her. Indeed, for what it is worth, I agree with her. I regard it as fanciful that the average consumer, having chosen goods for technical compliance, with careful regard to certification and technical documentation, would not then exercise a similarly high degree of care over trade origin.

22. I dismiss this second ground of appeal.

(3) Failure to apply interdependence principle

23. The Appellant contends that the Hearing Officer, having referred to the interdependence principle at §57, did not go on to apply it at §58. Consequently, in the case of goods and services where there was identity between the those of the parties, she did not conduct a different, less strenuous assessment than where there was a lower level of similarity between the goods/services.

24. Dealing with the latter point first, the Hearing Officer said at §58:

> "Taking all of the above into account and bearing in mind the principle of imperfect recollection, I do not consider that consumers would misremember or inaccurately recall which mark was which. Conceptually, both marks will be considered to be made-up words, although the CHEM element of the opponent's mark may be considered as allusive for the reasons set out above, however, even if the CHEM element is extracted from the mark, this will not assist as there is no corresponding element within the opponent's mark, and the first syllable of the marks differs. The marks are different lengths, and although the applicant's mark shares six of its eight letters with the opponent's mark, I consider that consumers - paying a high degree of attention - would notice the differences within the marks and that the letters appear in a different order. Whilst I accept that the applicant's mark may bring the opponent's mark to mind (but not the reverse), this in itself is insufficient for a finding of confusion and I consider that any similarity would be put down to coincidence by the average consumer. <u>Consequently, I do not consider that there exists a likelihood of direct confusion between the marks, even on identical goods/services</u>" (my underlining).

25. It is clear, therefore, that the Hearing Officer considered the Appellant's best case – identical goods and services – and found no likelihood of confusion, so I do not agree with the Appellant's contention in that regard.

26. It is true that the Hearing Officer did not expressly mention the interdependence principle in her reasoning at §58. However, in the preceding paragraph she said:

> "There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa".

27. Two points arise. First, as a matter of principle, where a principle or rule has been expressly cited by a decision maker, a reviewing court/tribunal should assume, absent evidence to the contrary, that the decision maker took it into consideration. Secondly and more importantly, the Hearing Officer provided her reasoning as to why, notwithstanding the identicality of

goods/services, there is no likelihood of confusion. She said at §58 "… I do not consider that consumers would misremember or inaccurately recall which mark was which … The marks are different lengths, and although the applicant's mark shares six of its eight letters with the opponent's mark, I consider that consumers - paying a high degree of attention - would notice the differences within the marks and that the letters appear in a different order".

28. It is clear, therefore, that the Hearing Officer was of the view that the marks are simply not sufficiently similar for direct confusion to arise. That was a conclusion that was open to her, and therefore ought not to be disturbed on appeal.

29. I shall briefly address an argument raised in oral argument during the hearing. Counsel for the Appellant contended as follows:

> "…the hearing officer has found there to be no likelihood of confusion for any of the goods and services despite that firstly some of the goods and services are identical, secondly, there being a medium degree of visual similarity in her findings, thirdly, the visual means being the principle way the marks would be encountered by the average consumer, and fourthly, there being a high-level of distinctive character to the earlier mark. The only countervailing point taken is that a high degree of attention would be paid during the purchasing process because, as the hearing officer held, some of the goods and services are treated as being addressed to a specialist professional buyer who at least in some circumstances may have regulatory concerns. … The overarching point I make is that all but one of those five factors were in favour of a likelihood of confusion. The rule of thumb, which is a well-worn and established as can be seen for example in the EU IPO guidelines which I included in my bundle, is that where everything is medium, you are likely to conclude there is a likelihood of confusion".

30. Arnold LJ said the following in *TVIS Limited v Howserv Services Limited and others* [2024] EWCA Civ 1103 when dealing with the appellant's submission that the judge had erred by simply holding that the marks in issue in that case were visually and aurally "similar" rather than "highly similar":

> "34. I do not accept this argument for two reasons. The first is that no error of principle on the part of the judge has been identified. The assessment of the degree of visual and aural similarity between a sign and a trade mark is a matter for the first instance tribunal. Nor can it be said that the judge's assessment is plainly wrong.
>
> 35. The second and more fundamental reason is that, while it is conventional for first instance tribunals in trade mark cases to articulate their assessment of the degree of visual and aural similarity between signs and trade marks using words such as "high", "medium" or "low", there is no legal requirement for tribunals to do so. All that is required is for the tribunal to assess the nature and extent of any similarities. This is because what matters is not the verbal label that is applied to the assessment, but whether the similarities in conjunction with the other factors which must be taken into account lead to a likelihood of confusion. It is possible for there to be no likelihood of confusion despite a relatively high degree of visual and aural similarity. Equally it is possible for there to be a likelihood of confusion despite a relatively low degree of visual and aural similarity. It depends on the other factors that are in play."

31. Although the submission to which Arnold LJ was responding was different to that of the Appellant in this matter, the underlying principle is equally applicable. The key issue is "whether

the similarities in conjunction with the other factors which must be taken into account lead to a likelihood of confusion". The Hearing Officer explained why, notwithstanding that she had found a medium degree of visual similarity, the similarities between the marks were not of the type which would lead the average consumer to confuse one with the other. I reiterate what I said at §28 above in that regard. I add also that the Hearing Officer's approach was entirely in line with the oft-cited principle (cited by the Hearing Officer at §16) that "The likelihood of confusion must be appreciated globally, taking account of all relevant factors". That principle eschews a "scorecard approach" to similarity factors – rather it is a holistic exercise.

32. I dismiss this third ground of appeal.

(4) Lack of cogency in conclusion

33. The Hearing Officer said at §58 "Whilst I accept that the applicant's mark may bring the opponent's mark to mind (but not the reverse), this in itself is insufficient for a finding of confusion …".

34. The Appellant contends that "where the risk of being brought to mind does not result from an established reputation or acquired distinctiveness but instead arises from the inherent similarities between marks and goods/services … there is no rational basis of concluding that the earlier mark will be brought to mind sufficiently accurately to mean that confusion will not arise. Quite the contrary, where a similar mark is inherently likely to bring to mind another, despite having neither reputation or acquired distinctiveness and differences existing between the two, the only plausible explanation for this is that the differences will not be remembered".

35. I am unable to agree with the Appellant. The various grounds under s. 5 of the Act envisage different levels of similarity. Section 5(3) requires only sufficient similarity for the average consumer to make a connection between the marks, whereas s. 5(2)(b) requires the similarity to be such that there is a likelihood of confusion. The Hearing Officer correctly applied the principle, well-established since *Sabel BV v Puma AG* Case C-251/95, that "mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient" for a finding of confusion (§57(i)).

36. I can see no reason in principle why marks, in the absence of reputation/acquired distinctiveness, may be sufficiently similar to bring each other to mind, but insufficiently similar to be confused with each other. It simply does not follow that in the absence of reputation/acquired distinctiveness, if a mark brings another to the average consumer's mind, the average consumer will not remember the differences. Indeed, the Hearing Officer explained why she reached her conclusion at §58, and I have already held that her analysis and conclusion should be upheld.

37. I dismiss this fourth ground of appeal.

Conclusion

38. Given that the appeal has failed in relation to the identical goods/services, the Appellant's case in relation to the similar goods/services (ground 1) must also fail, and it is therefore unnecessary for me to consider whether the Hearing Officer may have misunderstood the evidence of Eric Bouchardy. The Hearing Officer made no error of principle or law, and the appeal is dismissed. The Application may proceed to registration for all goods/services.

Costs

39. Clearly, the Respondent has been the successful party in this appeal. In accordance with the scale costs in TPN 1/2023, I order that the Appellant should pay the Respondent the sum of £2,000.

40. The Hearing Officer ordered that the Appellant should pay the Respondent £1,200, which I do not disturb. Accordingly, the Appellant must pay the Respondent the sum of £3,200 within 21 days of this decision.

Dr. Brian Whitehead

7 June 2026

Representation

Mr Jonathan Hill of Counsel, instructed by Vault IP Ltd, for the Appellant

Ms Charlotte Blythe of Counsel, instructed by Dehns, for the Respondent