O/0081/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONALREGISTRATION NO. WO0000001703842 IN THE NAME OF ZIGGY LOU AUSTRALIA PTY LTD FOR THE FOLLOWING MARK:

ZIGGY LOU

IN CLASSES 24, 25 & 35

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. OP000442466 BY HUMANITARIAN OPERATIONS CIO

BACKGROUND AND PLEADINGS

1. Ziggy Lou Australia PTY LTD (“the holder”) is the holder of the International Registration shown on the cover page of this decision (“the IR”). The IR was registered on 7 November 2022 and, with effect from the same date, the holder designated the UK as a territory in which they seek to protect the IR under the terms of the Protocol of the Madrid Agreement. The IR was accepted and published in the Trade Marks Journal for opposition purposes on 12 May 2023. The holder seeks protection in the UK for the following goods and services:

Class 24: Household linen; bed linen; bed quilts; bed sheets; bed spreads; pillow cases; quilt covers; bed blankets; bed valances; bed skirts; mattress covers; cot sheets; wrapping cloths for wrapping babies; muslin cloths for wrapping babies; towels made of textile; blanket throws; children's blankets.

Class 25: Children's clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing for babies, being rompers, jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and booties; body suits; bloomers; romper suits; shirts; dresses; pinafore dresses; knitwear, namely knitted jumpers; jumpers in the nature of sweaters; pants; underwear; sleepwear; tights; stockings; socks; babies' bibs, not of paper; headwear; hats; bonnets (headwear); footwear.

Class 35: Online retail store services featuring clothing and household linen for babies and children; online retail store services featuring clothing and household linen for adults; retail clothing shop services; retail store services featuring clothing and household linen for babies and children; retail store services featuring clothing and household linen for adults; wholesaling of goods being wholesale store services featuring clothing and household linen for babies and children; wholesaling of goods being wholesale store services featuring clothing and household linen for adults; the bringing together, for the benefit of others, of clothing and household linen, excluding the transport thereof, enabling customers

to conveniently view and purchase the goods by means of retail stores or wholesale stores.

2. On 10 August 2023, Humanitarian Operations CIO ("the opponent") filed an opposition against the application under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following registration:

   Ziggy

   ZIGGY

   (Series of two)

   UK trade mark number UK00003555589
   Filing date 13 November 2020; registration date 11 November 2022
   Relying on some goods only, being:

   Class 24: Comforters (bedding); Quilt bedding mats; Quilted blankets [bedding]; Textile goods for use as bedding; Mats of linen.

3. The opponent argues that the marks at issue share the ZIGGY LOU name and that the goods and services are identical and similar to those of the earlier trademarks held by the opponent. The opponent submits that the products offered by the holder consist of goods specified in class 24, which are the same goods as those offered under the earlier trademarks by the opponent. The opponent states, that considering the matter globally, the similarity and target focus is sufficient to create a likelihood of confusion.

4. The holder filed a counterstatement denying the claims made against them.

5. The opponent is not represented. The holder is represented by Accolade IP Limited. No evidence has been filed in these proceedings. No hearing was requested and no written submissions in lieu have been filed by either party. This decision is taken following a careful perusal of the papers.

6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

PRELIMINARY ISSUES

7. The Registry wrote to the parties on 9 December 2025 stating that following a review of the Form TM7 dated 4 December 2023 it appears that the opponent is opposing all three of the holder's IR classes (being class 24, 25 and 35) and they have explicitly stated that the class 24 goods are identical. The Registry noted that the holder had only denied similarity of the class 24 goods in their counterstatement. In light of the Form TM7 being confusing, the Registry invited the holder to file an amended counterstatement on or before 23 December 2025 if they intended to deny similarity for the goods in class 25 and the services in class 35. The holder filed an amended counterstatement on 18 December 2025 denying similarity for the goods in class 24, class 25 and the services in class 35.

8. In their amended counterstatement, the holder lists multiple marks that contain "Ziggy" stating that they have been allowed to co-exist with goods/services in the same classes as the holder or different classes, despite the alleged relatedness of their goods and/or services to the opponent's. While noted, this has no bearing on the assessment I am required to make. When considering the likelihood of confusion under section 5(2)(b) the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods based on the specifications before me, not the goods effectively provided by the parties.[1]

[1] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

DECISION

Section 5(2)(b): legislation and case law

9. Section 5(2)(b) of the Act reads as follows:

> "5(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".

10. Section 5A of the Act states as follows:

> "Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

11. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

> "(6)(1) In this Act an "earlier trade mark" means –
>
> (a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

12. The marks in the opponent's registration qualify as earlier trade marks under the above provisions. As the marks in the opponent's registration had not completed their registration process more than five years before the filing date of the IR, they are not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods highlighted in its notice of opposition.

13. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) ("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:

(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 the goods and services

14. The parties goods and services are as follows:

The opponent's goods	The holder's goods and services
Class 24: Comforters (bedding); Quilt bedding mats; Quilted blankets [bedding]; Textile goods for use as bedding; Mats of linen.	Class 24: Household linen; bed linen; bed quilts; bed sheets; bed spreads; pillow cases; quilt covers; bed blankets; bed valances; bed skirts; mattress covers; cot sheets; wrapping cloths for wrapping babies; muslin cloths for wrapping babies; towels made of textile; blanket throws; children's blankets. Class 25: Children's clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing for babies, being rompers, jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and booties; body suits; bloomers; romper suits; shirts; dresses; pinafore dresses; knitwear, namely knitted jumpers; jumpers in the nature of sweaters; pants; underwear; sleepwear; tights; stockings; socks; babies' bibs, not of paper; headwear; hats; bonnets (headwear); footwear. Class 35: Online retail store services featuring clothing and household linen for babies and children; online retail store services featuring clothing and

	household linen for adults; retail clothing shop services; retail store services featuring clothing and household linen for babies and children; retail store services featuring clothing and household linen for adults; wholesaling of goods being wholesale store services featuring clothing and household linen for babies and children; wholesaling of goods being wholesale store services featuring clothing and household linen for adults; the bringing together, for the benefit of others, of clothing and household linen, excluding the transport thereof, enabling customers to conveniently view and purchase the goods by means of retail stores or wholesale stores.

15. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

16. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

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

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

17. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur Lernsysteme v OHIM- Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

18. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU

in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words of phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

19. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.[2]

20. In making the following comparison, I remind myself of Section 60A(1)(b) of the Act which sets out that goods or services are not to be regarded as dissimilar from each other solely on the ground that they appear in different classes under the Nice Classification.

21. In its notice of opposition, the opponent states that the holder's goods and services are identical and similar to those of the earlier trademark held by the opponent. The opponent also states that the products offered by the holder consist of goods specified in class 24, which are the same goods as those offered under the earlier trademark by the opponent. Considering the matter globally, the opponent states that the similarity and target focus is sufficient to create a likelihood of confusion.

22. In their amended counterstatement, the holder argues that their goods are not highly identical or similar to the opponent's goods. The holder states that their goods comprise a broader range of household and baby-related textile items whereas the opponent's goods are confined to bedding-specific articles which are primarily intended on use for beds for sleeping. Additionally, the holder states that their goods in class 25 consist of clothing, footwear, and headwear for babies,

[2] BL O-399-10 (AP)

children, and adults, which are wearable items designed to be worn on the body and serve an entirely different function from household linen or bedding products, and the opponent does not rely on any goods in class 25. In addition, the holder states that their services in class 35 relate to the retail and wholesale presentation of clothing and household linen, whereas the opponent's goods in class 24 concern bedding and household textile products themselves. The holder submits that the manner in which the opponent's class 24 goods and the holder's class 35 services are presented to consumers is different, and that such differences in presentation further reduces any likelihood that consumers would assume a common commercial origin.

23. The holder states in their counterstatement that their investigation showed that the opponent's products appear to be limited to beanie headwear and do not include bedding, blankets, household linen, or other textile goods falling within class 24, nor clothing goods comparable to those applied for by the holder in class 25. While noted, this point is of no assistance as no details of these investigations are before me. Consequently, this has no bearing on the assessment I am required to make. When considering the likelihood of confusion under section 5(2)(b) the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods and services based on the specifications before me, not the goods and services effectively provided by the parties.[3]

Class 24

Household linen; bed linen; bed quilts; bed sheets; bed spreads; pillow cases; quilt covers; bed blankets; bed valances; bed skirts; mattress covers; cot sheets.

24. The holder's goods listed above all fall within the opponent's broader term of "textile goods for use as bedding". As a result, I find the goods to be identical under the principle in *Meric*.

[3] *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited,* Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

Blanket throws; children's blankets.

25. The two holder's blanket products listed above are not limited in any way so, therefore, could be quilted. As a result, they can be said to fall within the opponent's term of "quilted blankets [bedding]". Additionally, the goods could be considered to fall within the opponent's term of "textile goods for use as bedding" if they are used as bedding. As a result, I am of the view that these goods are identical under the principle outlined in *Meric*.

Towels made of textile.

26. The holder's goods listed above are a type of household linen that can be used to wash and/or dry household items or individuals. I accept that there may be an overlap in trade channels for the above holder's good with the opponent's goods such as "textile goods for use as bedding", such as for the likes of large departmental stores or supermarkets which offer an extensive range of goods in many different departments. However, I consider that bedding is likely to be found in the bedroom section of large retailers with *towels made of textile* found in the bathroom or kitchen section of large retailers. While the above holder's goods and the opponent's goods may be used by the same user, this is at a very general level given the broad nature of the user base for the parties goods and the fact that they include those buying textile goods for their home, albeit for different purposes. Taking all of this into consideration, considering the differences in nature, purpose and method of use, and adopting a 'common sense' approach overall[4], I consider the goods to be dissimilar.

Wrapping cloths for wrapping babies; Muslin cloths for wrapping babies.

27. It is my understanding that the above holder's goods are pieces of fabric used to swaddle babies to sleep or to wrap babies to an adults chest in a form of sling. Wrapping cloths used for swaddling babies could be argued to be a form of bedding as they are used as a form of comfort and warmth when a baby sleeps. While the

[4] *Unicorn Studio Inc v Veronese* [2024] EWHC 1098 (Ch)

above holder's goods are not identical to the opponent's terms of "textile goods for use as bedding", I do consider that there is a degree of similarity. As "textile goods for use as bedding" are not limited to certain materials, the goods could be made from the same materials. The purpose will be similar, as they both provide comfort and warmth when sleeping, especially so when the holder's goods are used to wrap the babies for sleeping. In respect of trade channels, these goods are likely to be produced by the same undertakings and could be found in close proximity to one another in large retail stores or supermarkets, especially in close proximity with children's bedding. While the above holder's goods and the opponent's goods may be used by the same user, this is at a general level given the broad nature of the user base being members of the general public buying textile goods for their home or wrapping cloths / muslin cloths for wrapping babies. However, I acknowledge that they may be a degree of competition between the goods as a consumer may wish to purchase a blanket over a wrapping cloth for wrapping babies, or vice versa. Overall, taking all of this into account, I find that the goods are similar to between a low and medium degree.

Class 25

Children's clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing for babies, being rompers, jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and booties; body suits; bloomers; romper suits; shirts; dresses; pinafore dresses; knitwear, namely knitted jumpers; jumpers in the nature of sweaters; pants; underwear; sleepwear; tights; stockings; socks; babies' bibs, not of paper; headwear; hats; bonnets (headwear); footwear.

28. The main commonality between the above holder's goods and the opponent's goods is that they are made of material. However, this is not enough to justify a finding of similarity. The goods have different natures and serve different purposes, namely that the above goods being clothing are to be worn by people for protection and/or fashion, whereas the opponent's goods are mainly to be used when sleeping. Therefore, they do not share similar uses or methods of use.

29. I do not consider that clothing goods and bedding goods will be sold together. Even where sold through the same trade channels, these goods would be sold in entirely different parts of those retail establishments. While the above holder's goods and the opponent's goods may be used by the same user, this is at a very general level given the broad nature of the user base being members of the general public buying textile goods for their home or clothing and is not at a sufficient level to establish similarity. The goods are not complementary, nor are they in competition. As a result, I am of the view that these goods are dissimilar.

Class 35

Online retail store services featuring […] household linen for babies and children; online retail store services featuring […] household linen for adults; retail store services featuring […] household linen for babies and children; retail store services featuring […] household linen for adults; wholesaling of goods being wholesale store services featuring […] household linen for babies and children; wholesaling of goods being wholesale store services featuring […] household linen for adults; the bringing together, for the benefit of others, of […] household linen, excluding the transport thereof, enabling customers to conveniently view and purchase the goods by means of retail stores or wholesale stores.

30. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

31. In *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, Mr Geoffrey Hobbs Q.C. as the Appointed Person reviewed the law concerning retail services v goods. He said that:

> "9. The position with regard to the question of conflict between use of BOO! for handbags in Class 18 and shoes for women in Class 25 and use of MissBoo for the Listed Services is considerably more complex. There are four main

reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are 'similar' to goods are not clear cut."

32. However, on the basis of the European courts' judgments in *Sanco SA v OHIM*, Case C-411/13P and *Assembled Investments (Proprietary) Ltd v. OHIM*, Case Page 14 of 27 T105/05, at paragraphs [30] to [35] of the judgment, upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd* Case C-398/07P, Mr Hobbs concluded that:

    i. Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;

    ii. In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

    iii. It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

    iv. The GC's findings in Oakley did not mean that goods could only be regarded as similar to retail services where the retail services related

to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

33. In this case, I compare the holder's services above with the opponent's goods. I consider that the opponent's goods are important/indispensable to the provision of the above holder's class 35 services in that they are all types of household linen. I also consider that all of the opponent's goods will be sold through the same trade channels as the holder's services, and to the same users (i.e., members of the general public), who may perceive the goods and services as emanating from the same undertaking. Consequently, I do consider these goods and services to be complementary and similar to a medium degree.

Online retail store services featuring clothing […] for babies and children; online retail store services featuring clothing […] for adults; retail store services featuring clothing […] for babies and children; retail store services featuring clothing […] for adults; wholesaling of goods being wholesale store services featuring clothing […] for babies and children; wholesaling of goods being wholesale store services featuring clothing […] for adults; the bringing together, for the benefit of others, of clothing […], excluding the transport thereof, enabling customers to conveniently view and purchase the goods by means of retail stores or wholesale stores; retail clothing shop services.

34. In this case, I accept that there may be an overlap in trade channels for the above holder's goods with the opponent's goods such as "textile goods for use as bedding", such as for the likes of large departmental stores or supermarkets which offer an extensive range of goods in many different departments. However, I consider that this does not necessarily mean it is at a sufficient level to establish similarity as, if so, any goods sold at large department stores or supermarkets would have a sufficient level of overlap. While the opponent's goods may be used by the same user, this is at a very general level given the broad nature of the user base being members of the general public. Such an overlap in both user and trade channel is at best fleeting and is not at a sufficient level to establish similarity. Despite this, the users are unlikely to perceive the goods and services as emanating from the same undertaking. The opponent's goods are not important/indispensable to the provision of the above holder's class 35 services.

Consequently, I do not consider these goods and services to be complementary and I find the goods and services to be dissimilar.

Conclusion of goods and services comparison

35. Where there is no similarity of goods or services, there can be no likelihood of confusion in respect of oppositions brought under s5(2)(b) grounds.[5] As a result, my findings above mean that the opposition fails in respect of the following goods and services, being those that I have found dissimilar:

Class 24: *Towels made of textile*.

Class 25: *Children's clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing, being jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and socks; clothing for babies, being rompers, jumpers, knitwear, shorts, dresses, t-shirts, shirts, blouses, skirts, pants, beanies and booties; body suits; bloomers; romper suits; shirts; dresses; pinafore dresses; knitwear, namely knitted jumpers; jumpers in the nature of sweaters; pants; underwear; sleepwear; tights; stockings; socks; babies' bibs, not of paper; headwear; hats; bonnets (headwear); footwear.*

Class 35: *Online retail store services featuring clothing […] for babies and children; online retail store services featuring clothing […] for adults; retail store services featuring clothing […] for babies and children; retail store services featuring clothing […] for adults; wholesaling of goods being wholesale store services featuring clothing […] for babies and children; wholesaling of goods being wholesale store services featuring clothing […] for adults; the bringing together, for the benefit of others, of clothing […], excluding the transport thereof, enabling customers to conveniently view and purchase the goods by means of retail stores or wholesale stores; retail clothing shop services.*

[5] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

The average consumer and the nature of the purchasing act

36. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear 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."

37. The goods/services at issue are ordinary consumer goods/services that will be selected by the general public at large. When the selection takes place online or via a catalogue, the goods/services will be selected after viewing an image of the goods/services on a webpage or catalogue page. If the goods are available in physical stores, the goods will be displayed on shelves or racks where they will be self-selected by the consumer. Clearly, the visual component will dominate the selection process, though I do not discount the aural component entirely as suggestions may come from word-of-mouth recommendations or advice from sales assistants. In respect of the level of attention paid, I am of the view that when selecting the goods, the consumer is likely to consider factors such as the suitability of the goods, materials used, cut, quality, aesthetic appearance and durability. The cost of purchase for the goods/services is likely to vary and the goods will be purchased on a reasonably frequent basis as the need for them arises. Generally speaking, the average consumer will pay a medium degree of attention when selecting the goods/services.

Comparison of marks

38. 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 proceed to 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.

39. 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."

40. It would be wrong, therefore, to dissect the trade marks artificially, although 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.

41. The respective trade marks are shown below:

The opponent's registration	The IR
Ziggy ZIGGY (Series of two)	ZIGGY LOU

42. For the purposes of the comparison, as the two marks within the opponent's registration are identical, save for the difference in case (which is of no impact because a word trade mark registration protects the word itself, irrespective of font, capitalisation or otherwise, therefore, a trade mark in capital letters covers notional use in lower case and vice versa), I will proceed by considering both of the marks within the opponent's registration as one, with reference to "the opponent's mark" being viewed as reference to both.

43. In its amended counterstatement, the holder vehemently denies the opponent's allegation of confusion and similarity. The holder asserts that the IR is completely different from and bears minimal resemblance of similarity at all to the opponent's marks as firstly, visually, the IR will be perceived by consumers as a whole and the addition of the word "LOU" adds distinctiveness and creates additional impressions to the IR. Secondly, the opponent's allegations fail to consider the "LOU" element of the IR and the opponent's perspective is limited and prejudiced against the holder, in a sense that the overall impressions of the marks are dissimilar, contrary to established principles of global appreciation. Thirdly, phonetically the marks are dissimilar. The IR is composed of three syllables "Zee-Gee-Loo" which is contrary to the opponent's mark which only has two syllables "Zee-Gee". The holder states that the marks differ in overall image, spelling, pronunciation, commercial impression, and appearance.

44. While I do not intend to reproduce the comments from both the opponent and holder in relation to the comparison of the marks fully here, I can confirm that I have taken them into account in making the following comparison.

Overall impression

45. The IR is a word only mark consisting of "ZIGGY LOU" in a black uppercase font. There are no other elements that contribute to the overall impression of the mark which lies equally across the mark.

46. I note that the opponent's series of two marks are word only marks and consist of "Ziggy" / "ZIGGY" respectively. Both are presented in a plain typeface. There are

no additional elements to the marks and therefore the overall impression lies in the words themselves.

Visual comparison

47. Visually, the opponent's mark and the IR overlap through the use of the word "ZIGGY", which is the first word in the IR and the only word in the opponent's mark. The marks differ in that the IR contains two words, the second word being "LOU". This point of difference will have an impact on the visual comparison of the marks. Overall, I am of the view that the shared use of the word "ZIGGY" being the entirety of the opponent's mark and the first word of the IR, and bearing in mind that consumers tend to focus on the beginning of marks,[6] is sufficient to result in a finding that the marks at issue are visually similar to a medium degree.

Aural comparison

48. The opponent's mark consists of two syllables and will be pronounced as "ZIG-EE". As for the IR, this consists of three syllables and will be pronounced "ZIG-EE-LOO". The IR has one additional syllable. While consumers tend to pay more attention to the beginning of the words in marks, as stated above, which in the present case is where the first two syllables are identical, the third syllable of the IR, "LOO", will act as a point of aural difference between the marks. In comparing the opponent's mark and the IR, I am of the view that they are, aurally, short marks (being either two syllables or three syllables in length). While there is no special test for 'short marks',[7] I consider that the shortness of the marks at issue means that the average consumer is more likely to notice the differences. As a result, I do not consider that the marks are highly similar but, instead I find that the marks are aurally similar to a medium degree.

[6] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[7] See paragraph 44 of *BOSCO*, BL O/301/20

Conceptual comparison

49. Conceptually, the opponent submits that the opponent's mark relates to their charitable education offering (that was created by Louie) and its main character Ziggy, an animated raccoon. Louie has been referred to as Lou since 2015. The opponent states that Lou, together with 11 other child directors created a charitable clothing line targeted at babies, infants, children and their families which helps teach children and keep them safe. The opponent submits that if another company used the name Ziggy for children's and infant's clothing, it would create confusion and the name Ziggy Lou would suggest a much closer affiliation and may even lead consumer's to believe that there is a charitable benefit in making a purchase. The opponent submits that due to the fact that both organisations are targeting the same audience under the same name, it is likely that their audiences are likely to assume that visiting the Ziggy Lou website and purchasing items from there is for a charitable course. However it is not. The opponent states that a survey undertaken by their children directors of 128 parents from their school, showed that they thought that the Ziggy Lou was affiliated with the opponent. On this point, I remind myself that so long as a significant proportion of consumers are confused then a court is entitled to find confusion.[8] However, I do not consider 128 parents to be a significant proportion of consumers. As stated previously, no evidence has been filed in these proceedings. Consequently, I cannot take this as evidence of fact.

50. Conceptually, the holder submits that as pointed out by the opponent, "ZIGGY" is the name of their animated raccoon while "LOU" supposedly signifies a child director in their organisation. The holder states that these inherent differences further lessen the risk of consumers mistaking their children's clothing brand "ZIGGY LOU" for the opponent's charitable services using the character "ZIGGY". The holder states that their consumers are not familiar with the animated raccoon nor the child director of the opponent and there are no raccoons nor child directors in the holder's business or mark. The holder states that any such conceptual associations relied upon by the opponent are therefore insufficient to give rise to

[8] *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41,

confusion. The holder denies that the average consumer would be aware of, or place significance on, the opponent's internal references or character associations when encountering the IR. As stated above, no evidence has been filed in these proceedings. Given this, I have no evidence to suggest consumers would know any of the reasoning behind the name choices so this only leaves me with considering the concept of the marks as they appear before me. Even if the intention behind the marks was as stated, this is not readily apparent to the consumer and as a result I fail to see how these points are relevant.

51. The opponent's mark consists solely of the word "ZIGGY". I consider it likely that the majority of consumers will afford the word "ZIGGY" (in both marks) the meaning of a given name or nickname.

52. The IR consists of two words "ZIGGY LOU". "LOU" is a distinctive part of the IR so would not be overlooked by consumers to the point that it would be excluded. Given this I am not going to discuss the possibility of the consumer shortening the IR to exclude "LOU".

53. In comparing the marks, I refer to the case of *Luciano Sandrone v EUIPO* T-268/18 wherein the GC stated that:

> "85. […] a first name or a surname which does not convey a 'general and abstract idea' and which is devoid of semantic content, is lacking any 'concept', so that a conceptual comparison between two signs consisting solely of such first names or surnames is not possible.
>
> 86. Conversely, a conceptual comparison remains possible where the first name or surname in question has become the symbol of a concept, due, for example, to the celebrity of the person carrying that first name or surname, or where that first name or that surname has a clear and immediately recognisable semantic content.
>
> 87. The Court has thus previously held that the relevant public would perceive marks containing surnames or first names of persons as having no specific

conceptual meaning, unless the first name or surname is particularly well known as the name of a famous person (see, to that effect, judgments of 18 May 2011, *IIC v OHIM— McKenzie (McKENZIE*), T502/07, not published, EU: T:2011:223, paragraph 40; of 8 May 2014, *Pedro Group v OHIM— Cortefiel (PEDRO)*, T38/13, not published, EU:T:2014:241, paragraphs 71 to 73; and of 11 July 2018, *ANTONIO RUBINI*, T707/16, not published, EU:T:2018:424, paragraph 65)."

54. In addition to the above, I note that the GC has also found that names will not be conceptually similar unless they are recognised as being linked with the same family.[9]

55. The IR consists of two words "ZIGGY LOU". As stated above, I consider it likely that the majority of consumers would afford the word "ZIGGY" the meaning of a given name. Additionally, I consider that the majority of consumers will consider "LOU" to be a forename or nickname, for example, short for Louis or Louise. Therefore, the overall concept of the IR will be a person's name or shortened name. The IR does not have any meaning as a whole outside of its reference to two words, "ZIGGY" and "LOU", being given names, that are combined to form the idea of someone named ZIGGY LOU. That being said, I will say that, when viewing the IR as a whole, the combining of a forename with another shortened name, doesn't give it any further concept from the word "ZIGGY" alone.

56. In comparing the marks, I accept they both consist of the word "Ziggy". "Ziggy" is a forename and while this will be understood it does not have any known concept outside of that. Further, it will not be immediately understood as a reference to a specific celebrity. As such, it is not capable of being compared. The conceptual position is therefore neutral.

57. However, if I am wrong in reaching a conclusion of conceptual neutrality, the shared use of the forename "Ziggy" is not particularly remarkable as it is simply a forename that, while not being overly common, will be well known, so the shared

[9] *Lidl Stiftung v OHIM*, Case T-715/13

use between the marks would not be surprising to the consumer. Given the shared use of the word "Ziggy" will not be surprising, the difference in concept created by "Lou" is such that it renders the marks conceptually similar to a low degree.

Distinctive character of the opponent's mark

58. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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 Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 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)."

59. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made

of it. However, the opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness and, no evidence has been filed to that effect. Therefore, I only have the inherent position to consider.

60. The case law in relation to the distinctiveness of personal names was set out by the CJEU in *Nichols plc v Registrar of Trade Marks*.[10] The CJEU's judgment makes it clear that personal names are not devoid of distinctiveness per se and that it is not appropriate to apply stricter criteria to the assessment of the distinctiveness of personal names than to other types of marks.

61. As previously outlined, the opponent's mark is a word only mark that consists of the word "ZIGGY". As such, I find that the distinctiveness of the mark lies in the word "ZIGGY" which is a known forename in the UK. I appreciate that this neither describes nor alludes to the goods upon which the opponent relies. However, in *Harman International Industries, Inc v OHIM*, Case C-51/09P, the CJEU found that:

> "Although it is possible that, in a part of the European Union, surnames have, as a general rule, a more distinctive character than forenames, it is appropriate, however, to take account of factors specific to the case and, in particular, the fact that the surname concerned is unusual or, on the contrary, very common, which is likely to have an effect on that distinctive character. That is true of the surname 'Becker' which the Board of Appeal noted is common."

62. In *El Corte Inglés, SA v OHIM*, Case T-39/10, the GC found that:

> "54. As the applicant asserted in its pleadings, according to the case-law, the Italian consumer will generally attribute greater distinctiveness to the surname than to the forename in the marks at issue (Case T-185/03 *Fusco v OHIM – Fusco International (ENZO FUSCO)* [2005] ECR II 715, paragraph 54). The General Court applied a similar conclusion concerning Spanish consumers, having established that the first name that appeared in the mark in question was relatively common and, therefore, not very distinctive (Case T-40/03 *Murúa*

[10] Case C-404/02

Entrena v OHIM – Bodegas Murúa (Julián Murúa Entrena) [2005] ECR II-2831, paragraphs 66 to 68).

55. Nevertheless, it is also clear from the case-law that that rule, drawn from experience, cannot be applied automatically without taking account of the specific features of each case (judgment of 12 July 2006 in Case T 97/05 *Rossi v OHIM – Marcorossi (MARCOROSSI),* not published in the ECR, paragraph 45). In that regard, the Court of Justice has held that account had to be taken, in particular, of the fact that the surname concerned was unusual or, on the contrary, very common, which is likely to have an effect on its distinctive character. Account also had to be taken of whether the person who requests that his first name and surname, taken together, be registered as a trade mark is well known (Case C 51/09 P *Becker v Harman International Industries* [2010] ECR I 5805, paragraphs 36 and 37). Likewise, according to the case-law cited in the previous paragraph, the distinctive character of the first name is a fact that should play a role in the implementation of that rule based on experience."

63. Taking all of the above into account and bearing in mind that "ZIGGY" will be readily identified as a forename to UK consumers, I am of the view that it enjoys a medium degree of distinctiveness. On this point, I appreciate that the mark neither describes nor alludes to the goods upon which the opponent relies. However, the use of a forename as a reference to the person offering of the goods at issue is unlikely to be remarkable to consumers in the UK.

Likelihood of confusion

64. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. 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 and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

65. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods and services at issue are marketed, and in which type of store/platform they are made available.

66. Throughout the course of this decision, I have found that the respective goods range from being identical to similar to between a low and medium degree. The average consumers are members of the general public at large who will select the goods/services via primarily visual means (though I do not discount an aural component) after having paid a medium level of attention during the purchasing process. I have found the marks to be similar to a medium degree from a visual and aural perspective. The position is neutral from a conceptual perspective though I have made a finding of conceptual similarity to a low degree in the event that some concept is attributed to the forename "ZIGGY". I have found the opponent's mark to possess a medium degree of inherent distinctive character.

67. Taking all of the above into account and even bearing in mind the principle of imperfect recollection, I do not consider that consumers would inaccurately recall or misremember the marks for one another. In short, I do not consider that the presence of the word "Ziggy" in the marks is sufficient to create a necessary degree of similarity between the marks, especially as a finding of direct confusion on this basis would be as a result of the consumer overlooking the second word in the IR, being "Lou", which I do not consider would occur. In my view, the shared use of "Ziggy" is not sufficient to result in consumers overlooking the word "Lou" in the IR.

It is my view that when looking to recall the marks, the consumer will pin their recollection of the IR on the mark as a whole, being "Ziggy Lou". Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for the consumer, paying a medium degree of attention, to distinguish between them and avoid mistaking one for the other. As such, notwithstanding the principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion, even when considered on identical goods.

68. That leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> > (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite

distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

69. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*,[11] where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

70. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*.[12] This is mere association not indirect confusion.

71. In considering the issue of indirect confusion, I am of the view that it is necessary to first consider the *Medion* principle, the correct approach to which was set out by Arnold J (as he then was) in the case of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch). In that case, the judge said:

"18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an

[11] BL O/219/16
[12] BL O/547/17

element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks – visually, aurally and conceptually – as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors."

72. In its counterstatement, the holder submits that the IR will be perceived by consumers as a whole. I agree with this approach as "Ziggy" is a well known forename in the UK and "Lou" is a common forename or nickname (having shortened a longer name such as Louis or Louise) in the UK. Therefore, both names will be used together to refer to an individual not just with the name "Ziggy" or just with the name "Lou", but with the name "Ziggy Lou". Standing back and

looking at the mark like this, as most average consumers would, I find that "Ziggy Lou" would be seen as one, not two signs and will, therefore, form a unit. On this point, I refer to paragraph 20 of *Whyte and Mackay* (cited above) which sets out that the *Medion* principle does not apply when a mark will be viewed as a unit. Consequently, I find that the *Medion* principle is not applicable here.

73. Even though I have discounted the relevance of the *Medion* principle, this does not mean that there cannot be indirect confusion and I will, therefore, proceed to consider the issue in the ordinary way.

74. The types of examples of indirect confusion as set out in *L.A. Sugar* (cited above) are not exhaustive. However, they are the most usual circumstances where indirect confusion may arise. In my judgment, none of them apply here. The word "ZIGGY" is a forename and it is, plainly, not so distinctive that consumers would assume that no-one else but the brand owner would be using it in a trade mark. In respect of whether the IR includes the addition of a non-distinctive element, I am of the view that it does not. The word "Lou" is equally dominant in the IR and, therefore, cannot be considered a logical addition that indicates a sub-brand. This is especially the case given that "LOU" does not indicate a certain type of goods for which the sub-brand or brand extension could be said to relate. Moving on, I do not consider that the marks fall within category (c) of *L.A. Sugar* on the basis that they do not consider a change of one element in the way described by the examples given (i.e. BRAT FACE and FAT FACE). Lastly, it seems improbable that the IR would be taken as signifying a collaboration between the opponent and another party. I say this because, as I understand it, collaborations would rarely be referred to in a way that would take the names of two brands and combine them to create a separate unitary meaning. For example, in the present case, the addition of "Lou" to "ZIGGY" would be seen as a reference to an individual person so would, in my view be illogical. In such circumstances, I consider it reasonable to suggest that any collaboration would not reference a full name but would, instead, be referred to as "Ziggy & Lou" or "Ziggy x Lou", for example. Lastly, even if it were the case that the consumer was to call to mind the opponent's mark upon seeing the "Ziggy Lou" mark, I have set out above that this would be mere association and not indirect confusion.

75. Taking all of the above into account, I find that there exists no likelihood of indirect confusion, even when the consumers are confronted by the marks on identical goods.

CONCLUSION

76. The opposition fails in its entirety. Therefore, the IR may, subject to any successful appeal of my decision, proceed to protection in the UK in respect of all of the goods for which protection was sought.

COSTS

77. The holder has been successful and is entitled to a contribution towards their costs, based upon the scale published in Tribunal Practice Note 2/2016. In the circumstances, I award the holder the sum of £250 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement:	£250
Total:	**£250**

78. I therefore order Humanitarian Operations CIO to pay Ziggy Lou Australia PTY LTD the sum of £250. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 30th day of January 2026

N Barratt
For the Registrar