BL O/0083/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. UK00003858312 BY ORGANIC RESTAURANT MANAGEMENT LIMITED

AND IN THE MATTER OF OPPOSITION NO. 440504 BY SALT BREWING COMPANY LIMITED

DECISION

Introduction

1. This is an appeal by .("***the applicant***") against the decision of A Cooper, acting on behalf of the Registrar of Trade Marks, dated 31 July 2025 (O-0709-25)("***the Decision***"), in which the opposition succeeded in its entirety. The applicant was ordered to pay to Salt Brewing Company Limited ("***the opponent***") £1,800 as a contribution to its costs.

2. On 12 December 2023 the applicant applied to register for various services in class 43 the trade mark set out below ("***the contested mark***"):

3. On 27 April 2023 the opponent filed opposition proceedings pursuant to sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 ("***the 1994 Act***"). For these purposes the opponent relied upon two trade mark registrations:

   SALT
   UK registration no. 3211087
   Filing date 6 February 2017; registration date 30 June 2017
   Relying on some services, namely:
   Class 43: Bar services; bars; café services; cafés; catering (food and drink); pubs; restaurants; wine bars.
   ("***the opponent's first mark***"); and

UK registration no. 3350046
Filing date 1 November 2018; registration date 22 March 2019.
Relying on some services, namely:
Class 43: Bar services; bars; café services; cafés; catering (food and drink); pubs; restaurants; wine bars; serving beverages in brewpubs; provision of food and drink; restaurant services; pizza parlors; beer garden services

("***the opponent's second mark***")

4. The first trade mark is relied upon for all three grounds of opposition. The second trade mark is relied upon for the purposes of section 5(2)(b) of the 1994 Act.

5. The applicant filed a counterstatement denying all the claims asserted against it in addition requested that the opponent provide proof of sue of the first mark.

6. Both parties filed evidence in chief and written submissions. In reply the opponent elected to file written submissions. A hearing took place before the Hearing Officer via video link on 9 July 2025. At that hearing Mr Joshua Marshall appeared on behalf the applicant instructed by Solidum Solicitors and Mr Seaghan Davey instructed by Clarion Solicitors Limited appeared on behalf of the opponent.

The Hearing Officer's Decision

7. The Hearing Officer first considered the evidence relied upon by the opponent to demonstrate proof of use of the opponent's first mark. At the hearing it was conceded on behalf of the applicant that the evidence demonstrated proof of use with respect to "bars", "bar services", "catering (food and drink)", "pubs" and "restaurants" (paragraph [11] of the Decision).

8. At the hearing it was maintained on behalf of the opponent that the opponent should also be found to have demonstrated proof of use with respect to the remaining services relied upon namely "café services", "cafés" and "wine bars". The Hearing Officer declined to do so for two reasons (1) that the terms conceded were sufficiently broad to cover the disputed terms; and (2) that the disputed terms were included in the specification of the opponent's second mark. See paragraph [11] of the Decision.

9. The Hearing Officer therefore made the relevant assessments on the basis of the conceded parts of the specification (paragraph [12] of the Decision). There is no challenge to that approach before me.

10. The Hearing Officer set out the legislation under sections 5(1) and (2) of the 1994 Act and the applicable legal principles to the assessment of the likelihood of confusion under section 5(2) of the 1994 Act at paragraphs [13] –[18] of the Decision. There is no challenge to these statements as to the applicable law and principles before me.

11. The Hearing Officer then considered the question of whether the first opponent's mark and the contested mark were identical for the purposes of the section 5(1)(a) and section 5(2)(a) grounds of opposition. The Hearing Officer set out the applicable law at paragraph [19] of the Decision. There is no challenge to the Hearing Officer identification of the applicable law before me.

12. The Hearing Officer then went on to consider whether or not the first opponent's mark and the contested mark were identical and found as follows:

> 20. The effect of the above case law is that, technically, marks do not have to be presented in exactly the same way in order for them to be deemed identical. For example, use of the same word in an alternative stylisation (even if it is not covered by notional and fair use) may still be sufficient to give rise to a finding of identity. Further, additional figurative elements may be overlooked by consumers meaning that they are not capable of being points of visual difference. In the present case, the opponent argues that its first mark is capable of being presented in white and on a black circular background. Further, the opponent submits that the figurative differences (such as the shading within the word 'SALT' in the applicant's mark and the Arabic lettering below this word) will go unnoticed. As for the applicant, I appreciate that it has conceded that there is a degree of similarity between all of the marks at issue, however, it denies that its mark is identical to the opponent's first mark.
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> 21. In considering the marks, I wish to first point out that while the opponent's first mark, by virtue of being a word only mark, is capable of being presented in the same typeface used by the applicant, in white and on a black background, it does not extend to use on a circulated background and neither does it cover the stylistic flourishes within the lettering in the applicant's mark. These are, therefore, points of visual difference between the marks that are not covered by the notional fair use of word only marks. In respect of the Arabic lettering, I agree with the opponent that this will not be

> understood by the majority of consumers in the UK but this does not mean that they will be ignored.
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> 22. In comparing the marks, I accept that the individual points of difference between the marks are of relatively little impact. That being said, that does not mean that the marks are identical. In the present case, I am of the view that when taking the marks as wholes, the culmination of the various points of difference are such that the consumer will notice them. Therefore, I find that the marks are not identical meaning that the opponent's section 5(1) and 5(2)(a) grounds fail at the first hurdle.

13. Having reached that conclusion the Hearing Officer then went on to assess the opposition under section 5(2)(b) of the 1994 Act.

14. In the context of the opposition under section 5(2)(b) the applicant made a number of concessions:

    (1) That the services were either similar to a medium degree or identical (paragraph [28] of the Decision);

    (2) That the marks in issue were all similar (paragraph [38] of the Decision); and

    (3) That the opponent's marks were '*distinctive to a moderate degree*' (paragraph [45] of the Decision).

15. Against that background the Hearing Officer found:

    (1) The applicant's mark is visually similar to a high degree to both of the opponent's marks (paragraph [41] of the Decision).

    (2) The marks are aurally identical (paragraph [42] of the Decision).

    (3) The marks are conceptually identical (paragraph [43] of the Decision).

    (4) The opponent's marks have no enhanced distinctive character (paragraph [48] of the Decision).

    (5) That there was a likelihood of direct and indirect confusion between the applicant's mark and each of the opponent's marks (paragraphs [52] and [54] of the Decision).

16. On the basis of those finding the Hearing Officer concluded that the opposition succeeded in its entirety and, subject to any appeal registration of the contested mark. The applicant was also ordered to pay the opponent a contribution towards its costs.

The Appeal

17. In a TM55P dated 11 September 2025 the opponent appealed the Decision. In the Grounds of Appeal it was:

    (1) Maintained that the Hearing Officer correctly concluded that the opponent's marks were not identical with the contested mark and therefore to consider only the section 5(2)(b) ground of objection.

    (2) Not disputed that the Hearing Officer's assessment of the average consumer was correct.

    (3) Stated that the applicant had accepted that the opponent's marks were visually, aurally and conceptually similar to between a medium and a high degree.

    (4) Maintained that the Hearing Officer should not have found a likelihood of confusion having failed to give any or any sufficient weight to a number of matters.

    (5) Maintained in the alternative that the no likelihood of confusion should have been founds in relation to 'food decorating services' where the services were not identical but had a lower degree of similarity.

18. Subsequently the opponent filed a Respondent's Notice. In the Respondent's Notice it was maintained that the Hearing Officer was correct for the reasons given under section 5(2)(b) of the 1994 Act; but should also have upheld the Opposition under section 5(1)(a) and 5(2)(a) of the 1994 Act on the basis that the opponent's first trade mark was identical to the contested trade mark.

19. At the hearing of the appeal which took place by video link on 24 November 2025, the applicant, was not represented by the time of the hearing. No submissions were filed by or on behalf of the applicant on the appeal. As at the hearing below Mr Seaghan Davey instructed by Clarion Solicitors Limited appeared on behalf of the opponent.

The Standard of Review

20. In his written submission Mr Davey referred me to the judgment of Joanna Smith J. in Axogen Corporation v. Aviv Scientific Limited [2022] EWHC 95 (Ch) at [24] to [25] where the applicable principles to be applied in appeals of this kind were conveniently set out.

21. More recently the Supreme Court has restated the approach to appeals of this kind in the context of a claim for trade mark infringement in its judgment in Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc [2025] UKSC 25 at [93] to [95] as follows:

93. The question whether there is a trade-mark infringement under section 10(2)(b) of the Act is a classic example of what has come to be known as a multi-factorial assessment. It involves the finding of primary facts, the application of relevant principles or rules of law to those facts and the evaluative decision whether, thus considered, something has happened which falls within (here) a statutory definition. In the present case those definitions are similarity and confusion, and the existence of the requisite causative link between the two, as required by section 10(2)(b), as well as the artificial (largely judge made) construct of the average consumer, through whose eyes similarity and confusion have to be gauged.

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.
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> 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."

22. I have kept these principles in mind when considering the present appeal.

The Decision

23. This is an appeal against the finding of a likelihood of confusion. The basis of the appeal is that the Hearing Officer is said to be that the Hearing Officer failed to take any or any sufficient account of the following:

    (1) That the mark applied for was not just for the word SALT. The word is reversed out in a dark disc and the letters have shading added to them.

    (2) The mark applied for has Arabic writing, which will strike the average consumer in the UK as particularly striking.

    (3) So far as the opponent's word mark was concerned, it contains none of the figurative elements or the Arabic text.

    (4) So far as the opponent's figurative mark is concerned there is no Arabic writing, there are 3 coloured stars below the word salt, and while these are surrounded by a circle, this is not a dark disc and the letter are not reversed out.

24. As was submitted on behalf of the opponent, in particular in the light of the concessions this is a surprising appeal. It was further maintained that the above points

did not provide any or any proper basis, in the light of the case law on the standard of review on appeal, to suggest that the Hearing Officer had erred in reaching the conclusions that they did. I agree.

25. The approach to the way appellate courts should approach the writing of judgments was recently set out by the Court of Appeal in Unik Bond SA v. Catbalogan Holdings SaRL [2025] EWCA Civ 1594 as follows:

> 59.In *Re Portsmouth City Football Club Ltd (in liquidation)* [2013] EWCA Civ 916, [2013] Bus LR 1152 Mummery LJ (with whom Rimer and Underhill LJJ agreed) posed the question at [36]:
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> > "What sensible purpose could be served by this court repeating in its judgments detailed discussions of every point raised in the grounds of appeal and the skeleton arguments when they have already been dealt with correctly and in detail in the judgment under appeal? No purpose at all, in my view."
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> 60.He continued at [38]:
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> > "The proper administration of justice does not require this court to create work for itself, for other judges, for practitioners and for the public by producing yet another long and complicated judgment only to repeat what has already been fully explained in a sound judgment under appeal. If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it."

26. Having regard to this guidance I have reviewed the Hearing Officer's Decision in the light of the criticisms made. Even if I considered it was necessary to consider each of the points identified in paragraph 23 above it is clear from paragraphs [20] to [22], [40], [51] and [54] of the Decision that the Hearing Officer did have in mind the differences referred in by the applicant in the Grounds of Appeal in making their multifactorial assessment of the likelihood of confusion.

27. There was one further point raised on the appeal and that was that the Decision relating to 'food decorating services' should be reversed on appeal. It was said that this was because there was a lower level of similarity between the services. However as noted in paragraph [30] of the Decision it was conceded that these services were similar to a medium degree and no explanation or reasoning is given as to why it is said that on that basis the findings of a likelihood of confusion should be overturned.

28. In all the circumstances, I can see no basis for setting aside the findings made by the Hearing Officer pursuant to which the Hearing Officer held that the Opposition should succeed in its entirety.

29. Turing to the Respondent's Notice. The opponent maintained that the Opposition based on the opponent's first mark should also have been upheld under section 5(1) and 5(2)(a) of the 1994 Act on the basis that the Hearing Officer should have held that the marks in issue were identical.

30. It is not suggested that the Hearing Officer misstated the relevant legal approach to the issue as set out in paragraph [19] of the Decision. What is however maintained is that the Hearing Officer erred in their application to the contested mark and the opponent's first mark. That position is put forward on the basis that the findings that the marks in issue were not identical in paragraph [22] of the Decision were in some way undermined by the observations and findings elsewhere in the Decision (see for example at paragraphs [40] and [51]).

31. I do not accept this. First, in the later paragraphs the Hearing Officer was considering the position under section 5(2)(b) i.e. making assessments as to (1) the degree of similarity of the marks in issue; and (2) the likelihood of confusion. Second, having read through the relevant paragraphs of the Decision I do not see that there are inconsistencies of approach to the respective analyses that produce an error of the type suggested by the opponent.

Conclusion

32. On the basis of my findings above it does not seem to me that the applicant has identified any error of principle or material error in the Decision. Nor do I consider that the opponent has identified an error or principle or material error such that the Decision should be upheld for the additional or alternative reasons put forward by them. Moreover, it is not in my view appropriate to interfere with the evaluations that the Hearing Officer made in reaching the conclusion that they did. In the result appeal fails and is dismissed.

33. As the appeal has been dismissed the opponent is entitled to a contribution towards the costs of the appeal. The opponent filed a Respondent's Notice but that did not advance matters further. It provided written submissions and appeared at the hearing of the appeal. It therefore seems to me in the exercise of my discretion that the applicant should pay to the opponent a contribution of £1000 to the opponent's costs of the appeal.

34. The Hearing Officer ordered the applicant to pay to the opponent a contribution of £1,800 with respect to its costs at first instance. In those circumstances I order that Organic Restaurant Management Ltd pay to Salt Brewing Company Ltd the sum of £2,800 on or before 20 February 2026.

EMMA HIMSWORTH KC

Appointed Person

30 January 2026