O/0097/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004102079
BY NEW SHORTS TRUST
TO REGISTER:

Reelshort

AS A TRADE MARK IN CLASSES 9, 38, 41 AND 42

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 451672
BY REELTIME APPS LIMITED

BACKGROUND AND PLEADINGS

1. On 19 September 2024, New Shorts Trust ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was accepted and published in the Trade Marks Journal on 04 October 2024 in respect of the following goods and services:

> **Class 9:** *Downloadable software for streaming audio and video content, being television drama series, on mobile phones, tablets, personal computers via a video streaming television platform not for user-generated content or being a social media platform.*
>
> **Class 38:** *Transmitting streamed sound and audio-visual recordings, being television drama series via an Internet based video streaming television platform; providing downloadable streaming in the nature of motion pictures, trailers, television drama programming, music, and games from a video streaming television platform by means of a global computer network and communications networks; online services, namely, streaming of digital audio and video content being television drama series in the field of motion picture entertainment; pay per view television transmission services, all relating to television drama series; transmission of video on demand, all being television drama series transmissions via an Internet based video streaming television platform; none of the aforementioned services for user-generated content or provided via a social media platform.*
>
> **Class 41:** *Providing online non-downloadable visual and audio recordings being television drama series, featuring comedy, drama, action, adventure, musicals, and animation; provision of non-downloadable movies and television drama programs via a video-on demand service; Video production of a television drama series; Production of radio and television drama programmes; entertainment services in the nature of providing non-downloadable entertainment content via the internet and electronic communications networks, namely, movies, television programs, and video clips, all being television drama series in the fields of comedy, drama, action, adventure, musicals, and*

animation; none of the aforementioned services for user-generated content or offered via a social media or networking platform.

Class 42: *Hosting of digital content being television drama series online via a video streaming television platform not being user-generated content or a social media platform.*

2. On 02 January 2025, the application was opposed by Reeltime Apps Limited ("the opponent") under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act") with the opponent relying on the following trade mark and some of the goods and services covered by the same, as shown below in bold:

UK00003394407 Reelshot Filing date: 24 April 2019 Registration date: 12 July 2019 **Class 9:** *Mobile phone battery chargers; Mobile phone cases; Mobile phone covers; Mobile phone docking stations; Mobile phone speakers; Mobile phone straps;* ***Application software for mobile phones;*** *Battery chargers for mobile phones; Carriers adapted for mobile phones; Carrying cases for mobile phones; Cases adapted for mobile phones; Cases for mobile phones; Chargers for mobile phones;* ***Computer application software for mobile phones; Computer programs and software for image processing used for mobile phones; Computer software for mobile phones;*** *Devices for hands-free use of mobile phones; Docking stations for mobile phones;* ***Downloadable software applications for mobile phones;*** *Protective cases for mobile phones;* ***Software for mobile phones;*** *Stands adapted for mobile phones; Straps for mobile phones; USB flash drives with micro USB connectors compatible with mobile phones; Video apparatus; Video editing apparatus;* ***Video editing software;*** *Video effects apparatus; Video phones;* ***Video players; Video recordings;*** *Videophones;* ***Computer software for controlling the operation of audio and video devices;*** *Computer video game software;* ***Digital video cameras; Digital video players; Digital video recorders;***

Downloadable interactive entertainment software for playing video games; ***Downloadable video files; Downloadable video recordings; Downloadable videos;*** *Interactive video game programs;* ***Interactive video software;*** *Lenses for video cameras; Prerecorded motion picture videos; Selfie lenses; Selfie sticks; Selfie sticks [hand-held monopods]; Selfie sticks used as smartphone accessories;* ***Application software for smart phones; Downloadable application software for smart phones;*** *Power supplies for smart phones; Waterproof cases for smart phones;* ***Software applications; Software applications for mobile devices****; Augmented reality software for simulation; Augmented reality software for use in mobile devices; Collaboration software; Video effects apparatus.*

Class 42: Design of software for audio and video operators; Development of hardware for audio and video operators; **Electronic storage of digital video files; Electronic storage of videos; Software as a service [SaaS]; Software design; Software development;** Hosting a website for the electronic storage of digital photographs and videos; Hosting multimedia educational content; Hosting multimedia entertainment content; Hosting of digital content online; Hosting of mobile applications; Hosting a website for the electronic storage of digital photographs and videos; Hosting an online website for creating and hosting micro websites for businesses; Hosting computer software applications for others; Hosting of digital content on the Internet; Hosting of e-commerce platforms on the Internet; Hosting of mobile websites; Cloud hosting provider services; Private cloud hosting provider service; Public cloud hosting provider service.

3. By virtue of its earlier filing date, the trade mark relied upon by the opponent is an "earlier mark" in accordance with Section 6 of the Act. As the opponent's earlier mark had been registered for five years or more at the filing date of the applied-for mark, it is subject to the use conditions under Section 6A of the Act. However, since the applicant elected not to put the opponent to proof of use, the opponent may rely upon all of the goods and services it has identified without demonstrating that it has used the mark.

4. Under Section 5(2)(b), the opponent claims there is a likelihood of confusion because the marks are highly similar, and the goods and services are identical or similar.

5. The applicant filed a counterstatement, denying the claims made. In particular, the applicant states that "Reelshort" and "Reelshot" differ significantly in terms of pronunciation, meaning, and consumer perception because "Reelshort" conveys the idea of short-form video content, emphasizing brevity and storytelling, whereas "Reelshot" suggests a focus on filming techniques or cinematographic shots. Furthermore, the applicant denies that the goods and services covered by its mark are similar to those of the opponent contending that the services offered under the "Reelshort" mark are primarily focused on the distribution and presentation of short-form digital video content, whereas the opponent's trade mark appears to be associated with services related to film production, recording, and cinematography.

6. The opponent is represented by Keltie LLP. The applicant is a litigant in person who represents itself. Neither party filed evidence during the evidence rounds. Neither party requested a hearing, but the opponent filed written submissions in lieu. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

7. 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.

DECISION

<u>Section 5(2)(b)</u>

8. 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."

9. Section 5A of the Act is as follows:

"5A 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."

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

(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 greater 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 to mind the earlier mark, is not sufficient;

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

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

Comparison of goods and services

11. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

> "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."

12. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> (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.

13. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM,* Case T-325/06, the General Court ("GC") stated that "complementary" means:

> "[…] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

14. In *Sanco SA v OHIM,* Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different. The purpose of examining whether there is a complementary relationship between goods and services is to assess whether the relevant public are liable to believe that the responsibility for the goods and services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander QC (as he then was) noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL O/255/13*:*

> "It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes."

15. Whilst on the other hand:

> "[…] it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together."

16. In *Gérard Meric v Office for Harmonisation in the Internal Market,* Case T- 133/05, the 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."

17. The competing goods and services are as follows:

The applicant's goods and services	**The opponent's goods and services**
Class 9: *Downloadable software for streaming audio and video content, being television drama series, on mobile phones, tablets, personal computers via a video streaming television platform not for user-generated content or being a social media platform.*	**Class 9:** *Application software for mobile phones; Computer application software for mobile phones; Computer programs and software for image processing used for mobile phones; Computer software for mobile phones; Downloadable software applications for mobile phones; Software for mobile phones; Video editing software; Video players; Video recordings; Computer software for controlling the operation of audio and video devices; Digital video cameras; Digital video players; Digital video recorders; Downloadable video files; Downloadable video recordings; Downloadable videos; Interactive video software; Application software for smart phones; Downloadable application software for smart phones; Software applications; Software applications for mobile devices.*
Class 38: *Transmitting streamed sound and audio-visual recordings, being television drama series via an Internet based video streaming television*	

platform; providing downloadable streaming in the nature of motion pictures, trailers, television drama programming, music, and games from a video streaming television platform by means of a global computer network and communications networks; online services, namely, streaming of digital audio and video content being television drama series in the field of motion picture entertainment; pay per view television transmission services, all relating to television drama series; transmission of video on demand, all being television drama series transmissions via an Internet based video streaming television platform; none of the aforementioned services for user-generated content or provided via a social media platform.	
Class 41: *Providing online non-downloadable visual and audio recordings being television drama series, featuring comedy, drama, action, adventure, musicals, and animation; provision of non-downloadable movies and television drama programs via a video-on demand service; Video production of a television drama series; Production of radio and television drama programmes; entertainment services in the nature of providing non-downloadable entertainment content via*	

the internet and electronic communications networks, namely, movies, television programs, and video clips, all being television drama series in the fields of comedy, drama, action, adventure, musicals, and animation; none of the aforementioned services for user-generated content or offered via a social media or networking platform.	
Class 42: *Hosting of digital content being television drama series online via a video streaming television platform not being user-generated content or a social media platform.*	***Class 42:*** *Design of software for audio and video operators; Electronic storage of digital video files; Electronic storage of videos; Software as a service [SaaS]; Software design; Software development.*

18. In its counterstatement, the applicant states that the applied-for specification is primarily focused on the distribution and presentation of short-form digital video content, whereas the opponent's specification appears to be associated with services related to film production, recording, and cinematography. As it can be seen from the comparison I conduct below, this is not reflected in the goods and services as they are registered and applied-for; hence, I reject the submission. I now turn to the comparison.

Class 9: *Downloadable software for streaming audio and video content, being television drama series, on mobile phones, tablets, personal computers via a video streaming television platform not for user-generated content or being a social media platform.*

19. The opponent's specification in class 9 covers the term *Software applications* which is sufficiently broad to cover the applicant's specific types of software. These goods are identical on the principle outlined in *Meric.*

Class 38: *Transmitting streamed sound and audio-visual recordings, being television drama series via an Internet based video streaming television platform; providing downloadable streaming in the nature of motion pictures, trailers, television drama programming, music, and games from a video streaming television platform by means of a global computer network and communications networks; online services, namely, streaming of digital audio and video content being television drama series in the field of motion picture entertainment; pay per view television transmission services, all relating to television drama series; transmission of video on demand, all being television drama series transmissions via an Internet based video streaming television platform; none of the aforementioned services for user-generated content or provided via a social media platform.*

20. The applicant's services in class 38 are various types of streaming services that allow users to access and consume digital content, such as television drama series, music, and games, directly via an internet-based platform without the need to download files. Examples of streaming services include Netflix, Spotify, and Amazon Prime. As it will be recalled, the opponent's services *Software applications* notionally cover the applied-for *software for streaming audio and video content.* On that basis, I agree with the opponent that the respective services are complementary as a software for streaming audio and video content cannot work without a streaming platform and consumers might believe that the goods and services are the responsibility of the same undertakings. Further, the goods and services target the same users and might be supplied by the same trade channels, for example the BBC streaming services is provided through the BBC iPlayer app which allows users to stream a wide range of BBC content. Overall, I consider those services to be similar to a medium degree to the opponent's goods.

Class 41: *Providing online non-downloadable visual and audio recordings being television drama series, featuring comedy, drama, action, adventure, musicals, and animation; provision of non-downloadable movies and television drama programs via a video-on demand service; Video production of a television drama series; Production of radio and television drama programmes; entertainment services in the nature of providing non-downloadable entertainment content via the internet and electronic communications networks, namely, movies, television programs, and video clips, all*

being television drama series in the fields of comedy, drama, action, adventure, musicals, and animation; none of the aforementioned services for user-generated content or offered via a social media or networking platform.

21. The same considerations which I have set out in relation to the services in class 38 apply, *mutatis mutandi*, to the applied-for services in class 41 which consist of the provision of entertainment content and visual and audio recordings online and/or via a video-on demand service. In this connection, I understand that on-demand service allows users to select and watch content at their convenience, whilst streaming refers to the method of delivering content over the internet in real-time allowing users to watch and listen to content as it is being transmitted – in both cases the opponent software goods is sufficiently broad to encompass downloadable software for streaming audio and video content as well as for accessing audio and video content online or through an on-demand service. Admittedly, the specification includes the production of radio and television programmes. Normally, providers of broadcasting services would be responsible for producing their own television drama series and their own radio and television drama programmes, whilst also making available downloadable software for streaming or watching on demand their TV and radio programmes. There is, therefore, a coincidence in terms of trade channels between the applied-for services in class 41 and the opponent's *Software applications* in class 9. Further, the goods and services target the same users and are complementary. Overall, I consider those services to be similar to a medium degree to the opponent's goods.

Class 42: *Hosting of digital content being television drama series online via a video streaming television platform not being user-generated content or a social media platform.*

22. The same considerations which I have set out in relation to the services in classes 38 and 41 apply, *mutatis mutandi*, to the applied-for services in class 42 which consist of *hosting of digital content being television drama series online via a video streaming television platform.* Overall, I consider those services to be similar to a medium degree to the opponent's goods.

Average consumer

23. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. 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. (as he then was) 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."

24. The average consumer for the goods and services at issue is a member of the general public. The goods and services will be provided online with the consumer selecting the goods and services having viewed an image displayed on a webpage. Considered overall, the selection process will be a predominantly visual one, although aural considerations will play their part, through, for example, word of mouth recommendations. As regards the level of attention, it will be neither higher, no lower than the norm, as there are no specific considerations which would warrant a low or high degree of attention being applied by the consumer during the selection.

Comparison of marks

25. 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. 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."

26. It would be wrong, therefore, to artificially dissect the trade marks, 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. The respective marks are shown below:

The applied-for mark	**The opponent's mark**
Reelshort	Reelshot

Overall Impression

27. Both marks are word only marks that, despite being presented as one word, will be viewed as the conjoining of the words 'REEL' and 'SHORT' and 'REEL' and 'SHOT'. As such, the overall impression of the marks lies across the words equally.

Visual similarity

28. Visually, the marks coincide in the sequence 'Reelsho' and the final letter 't'. They differ in the presence in the applicant's mark of a letter 'r' which is placed after the letter 'o' and before the final letter 't'. Bearing in mind that the marks are relatively long,

being nine and eight letter long respectively, that the only difference between the marks is in the penultimate letter ‘r’ in the applied-for mark, and that the marks have the same beginning, ending and middle letters, I consider them to be visually similar to a high degree.

Aural similarity

29. Aurally, the marks will be pronounced as ‘RIL-SHOT’ and ‘RIL-SHORT’, the only difference between the marks being the penultimate letter ‘r’ in the applied-for mark. Overall, I consider the marks to be aurally similar to a high degree.

Conceptual similarity

30. Conceptually, the opponent states that the words ‘Reelshort’ in the application and ‘Reelshot’ in the earlier mark are invented words and that the conceptual position is neutral. The applicant states that the marks have different meanings because "Reelshort" conveys the idea of short-form video content, emphasizing brevity and storytelling, whereas "Reelshot" suggests a focus on filming techniques or cinematographic shots.

Cambridge online dictionary contain the following definitions:

> *“**Reel:***
> *a name for a short video posted on a social media website”*
>
> *“**Short**:*
> *small in length, distance, or height”*
>
> *“**Shot**:*
> *a short piece in a film in which there is a single action or a short series of actions”*

31. Both the word ‘reel’ and the word ‘short’ have other meanings, however, the above are the most relevant in the context of the goods and services at issue which relate to

the provision of movies, television programs, and video clips. Consequently, I agree with the applicant that the average consumer will view the marks as the conjoining of the words 'REEL' and 'SHORT' and 'REEL' and 'SHOT' giving them the meanings set out above, although I do not think the average consumer will elaborate whether the combinations create other meanings such as those suggested by the applicant of "short-form video content" and "focus on cinematographic shots". Given the coincidence of the meaning conveyed by the word 'Reel' in both marks and the relevance of the meaning of the words 'short' and 'shot' (both of which refer to a characteristic of a reel, namely that of being short and being a shot), I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier mark

32. 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 *WindsurfingChiemsee* 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).”

33. Registered trade marks possess various 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 made of it.

34. The earlier mark consists of the words ‘Reelshot’. As it will be recalled, the opponent submits that the earlier mark is invented, and has an inherently high degree of distinctiveness. However, I have already rejected that submission. The word ‘Reelshot’ is not a dictionary word, but the words ‘Reel’ and ‘shot’ are, so I do not consider the earlier mark to be an invented word. Further, the combination is neither descriptive nor allusive of the registered *Software applications*, which are the goods on the basis of which I have carried out my assessment of the similarity of the goods and services; this even considering that *Software applications* is identical/similar to the applied-for goods and services insofar as it covers goods for streaming audio and video content. Accordingly, I consider the earlier mark to be distinctive to a medium degree.

Likelihood of confusion

35. 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, including that a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I must keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

36. Confusion can be direct or indirect. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, 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).”

37. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ approved Mr Purvis's formulation but added:

> "13. As James Mellor QC sitting as the Appointed Person pointed out in Cheeky Italian Ltd v Sutaria (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

38. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

39. Earlier in this decision I found that:

- The marks are visually and aurally similar to a high degree and conceptually similar to a medium degree.

- The goods and services are identical, or similar to a medium degree.

- The goods and services will be selected visually with a medium degree of attention. However, aural considerations cannot be discounted completely.

- The earlier mark is distinctive to a medium degree.

40. I consider that given the identity and similarity of the goods and services, and the medium degree of distinctiveness of the earlier mark, the high degree of visual and aural similarity between the marks is sufficient to cause the average consumer to directly confuse them. In reaching this conclusion, I bear in mind that the elements 'Reelshort' (in the application) and 'Reelshot' (in the earlier mark) are relatively long, being 9 and 8 letters respectively, and that the only difference between them is placed

towards the end of the words, where consumer attention is less focused. Added to this, the absence of any striking conceptual difference between the marks, one can easily foresee the marks being confused in the imperfect recollection of the average consumer.

OUTCOME

41. The opposition is successful, and the application is refused registration.

COSTS

42. The opponent has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £750 as a contribution towards the costs of proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the
applicant's counterstatement: £350
Submissions in lieu: £300
Official fee: £100
Total: £750

43. I, therefore, order New Shorts Trust to pay Reeltime Apps Limited the sum of £750. This sum is to 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 5th day of February 2026

TERESA PINTO
For the Registrar