

BL O/0121/26

THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NUMBERS 3,634,530 AND 3,831,924 IN THE NAME OF GLENS OF ANTRIM POTATOES LIMITED

AND IN THE MATTER OF OPPOSITION NUMBERS 438,887 AND 430,482 IN THE NAME OF LOCH LOMOND DISTILLERS LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF JUNE RALPH (O/744/25) DATED 8 AUGUST 2025

DECISION

Introduction

1. This is an appeal from the decision of June Ralph, for the Registrar, dated 8 August 2025 (O/744/25). Loch Lomond Distillers Limited unsuccessfully opposed the trade mark applications of Glen of Antrim Potatoes Limited under section 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994. It now appeals in relation to section 5(2)(b) only.
2. On 29 April 2021, Glen of Antrim Potatoes Limited filed an application for the word mark GLENS OF ANTRIM (No 3,634,530) and there is a claim of priority based on an earlier filing at the EUIPO on 29 July 2020. The application is for goods in Classes 21, 25 and 33. On 22 September 2022, Glen of Antrim Potatoes Limited also applied to register the following trade mark (which is a series mark along with the same sign in greyscale) (No 3,383,924) in Classes 16, 21, 25, 33 and 43:



3. In respect of both applications, the opposition is limited to the following goods in Class 33:
Alcoholic beverages (except beer); Spirits; Distilled spirits; Spirits and liquors; Gin; Vodka; Schnapps.
4. The Opposition was based three earlier marks. The First Earlier Mark (No 2,324,314) is the following:

GLEN'S

5. This mark is registered for the following goods in Class 33 “alcoholic beverages, excluding beer and whisky”.
6. The Second Earlier Mark (No 2,319,255A) is for a series of word marks: GLEN'S, GLEN'S VODKA, GLEN'S GIN, GLEN'S WHITE RUM, GLEN'S DARK RUM. The Third Earlier Mark (No 903,231,131) is for the word mark GLEN'S. Both these earlier marks are for goods in Class 33 “alcoholic beverages, excluding whisky, vodka, gin”.

Standard of appeal

7. The standard of appeal is by way of review. Neither surprise at a Hearing Officer's conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer's findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and further explained in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49] and *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc* [2025] UKSC 25, [93] and [94].
8. When considering this appeal, and applying these principles, it is important to remember the high bar set.

Grounds of appeal

9. There are five grounds of appeal. The first ground is that the Hearing Officer erred in her assessment of the level of enhanced distinctiveness in the earlier trade marks. The second ground is that the Hearing Officer erred by finding that the Respondent's mark had a single unitary concept that of glens (valleys) in County Antrim. The third ground of appeal is that the Hearing Officer erred in her consideration of the purchasing process, in particular in relation to the mark being spoken. The fourth ground was that the Hearing Officer gave too much weight to the apostrophe in the word Glen's. The final ground of appeal was that there was a failure by the Hearing Officer to properly consider the likelihood of confusion.

Ground 1: Enhanced Distinctiveness

10. The Appellant challenges the Hearing Officer's finding in relation to enhanced distinctiveness on two grounds: first, that there was inadequate reasoning; and, secondly, that the decision made was irrational. It was conceded by the Appellant that the Hearing Officer appears to have had regard to the appropriate test.
11. The Hearing Officer made her finding regarding enhanced distinctiveness at [65] (footnotes omitted):

I next consider whether the opponent can claim enhanced distinctiveness of its earlier marks, because of the use made of them. The relevant market I must consider is the UK and I bear in mind the *Chiemsee* factors given above. The opponent's evidence is examined at paragraphs 12-20. I note that the opponent's vodka products have contributed to the majority of the turnover and GLEN'S VODKA is

the mark which is most prevalent in the promotional and social media material, although there is some use of GLEN's solus in text and of GLEN'S PLATINUM VODKA too. The Grocer/Nielsen annual survey results demonstrate the longstanding nature of the brand and I note that GLEN'S VODKA was the recipient of a silver award in 2019 from International Spirits Challenge and the opponent's platinum vodka product received a gold award in 2019 from the World Vodka Awards. The applicant, in its skeleton argument, accepts that the opponent has a modest degree of enhanced distinctive character in relation to GLEN'S VODKA only. I would agree with that assessment but would go further to find the distinctive character of the marks GLEN'S VODKA and GLEN's solus in relation to vodka has been enhanced to a modest degree.

12. Mr Tariq KC, for the Appellant, submits that nowhere in this reasoning did the Hearing Officer explain why his submission that the marks had a high degree of enhanced distinctiveness was rejected. As a starting point, it has long been established that there is no obligation on Hearing Officers to discuss every argument raised by the parties in their decisions (see for instance, *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119, 122) and as it was explained by Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 2, [115]:

The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted....

13. In this case, the Hearing Officer had to consider whether she thought the earlier marks enjoyed enhanced distinctiveness and, if so, to what degree. Her reasoning clearly achieves this end. I see no reason why she should have been expected to explicitly set out that she did not accept Mr Tariq's submission because it was not (in her view) supported by the evidence. The rejection of the argument is implicit in her reasoning and finding.

14. Further, as Arnold LJ made clear in *Tvis Ltd v Howserv Services Ltd* [2024] EWCA Civ 1103, [35]:

...while it is conventional for first instance tribunals in trade mark cases to articulate their assessment of the degree of visual and aural similarity between signs and trade marks using words such as "high", "medium" or "low", there is no legal requirement for tribunals to do so...

15. This equally applies to other determinations made by Hearing Officers such as in relation to the level of distinctiveness. It is worth adding that these labels should not be seen as fixed points on a scale, but rather as an indication to the parties and appellate tribunals of the Hearing Officer's thinking in relation to a value judgment. Indeed, the fact that it is a value judgment is why challenges to a finding that a mark should have been, say, "highly" distinctive, rather than "moderately" so usually fail.

16. In fairness to Mr Tariq, in relation to the second part of his challenge he accepts that he has to overcome the very high hurdle of showing that the Hearing Officer's conclusion on enhanced distinctiveness is rationally insupportable. In support of his submission, he referred me to evidence on the sales ranking of the Glen's brand in the United Kingdom as well as evidence of sales data and promotional spend. These were all matters which

were considered by the Hearing Officer in her Decision, [12]-[20] and of which she later reminded herself in her reasoning on enhanced distinctiveness.

17. I accept that it would have been open to the Hearing Officer to have found there to have been a higher level of enhanced distinctiveness in the marks GLEN'S and GLEN'S VODKA. It is also the case that another Hearing Officer might have made a different finding on the same evidence. The assessment of whether a decision is rational is made more difficult for the reason mentioned above, namely that the meaning of enhancement of distinctiveness to a "modest" degree is not fixed. In other words, one Hearing Officer might use the term "modest" where another might use the term "moderate" or "medium" yet they both might have similar concepts in their minds as to the degree of distinctiveness.
18. Nevertheless, the standard of appellate review is strict and as James Mellor QC, sitting as an Appointed Person, reiterated in *NINEPLUS* (O/39/21), [14]: "Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference in this sort of appeal". This means that even though an Appointed Person might have reached a different conclusion from that of the Hearing Officer (and accordingly there is not one 'right' answer), an appellate tribunal cannot simply substitute its decision for that of the initial fact finder because it has a 'better' answer.
19. In this case, I cannot conclude that the finding on enhanced distinctiveness is one where this deference to the Hearing Officer is inappropriate as it does not cross the Rubicon to being a finding that no reasonable Hearing Officer would ever have made. I therefore dismiss the first ground of appeal.

Ground 2: Conceptual meaning

20. The Appellant's second challenge to the Hearing Officer's decision relates to her finding regarding the conceptual meaning of the Respondent's mark. Mr Tariq begins by challenging her reasoning as to the concept for the words GLENS OF ANTRIM, which is at [60] (footnote omitted):

The GLENS word element of the applicant's figurative mark does not have an apostrophe so an ordinary understanding of the word would be as the plural of the word glen, which some average consumers may know as a geographical term. The following words, of Antrim, further qualify where the glens may be located. The applicant, in its skeleton argument, states that "the concept conveyed by the word application is of the valleys of the Antrim region of Ireland". I agree with the applicant's submission as to this concept of Glens of Antrim.
21. Later in her decision, she stated that the mark formed a single conceptual unit which would be immediately graspable by the average consumer: [73].
22. Mr Tariq suggested to the Hearing Officer in his skeleton below that words and devices such as GLEN "strongly suggest Scotland and / or Scottish origin" (Skeleton, [48]) and he submits before me that there was no basis for the Hearing Officer to find the mark to be a single conceptual unit.
23. It was not in dispute between the parties that a glen is another name in Scots for valley, but likewise the same is true in the Northern Irish (Ulster) dialect. Mr Tariq goes on to

submit that because some consumers would not know that the County of Antrim has valleys (glens) the concept of GLENS OF ANTRIM would not be immediately graspable. On the contrary, he submits, it would only be graspable to the average consumer who knows the physical geography of Antrim.

24. It was also said in the hearing before me that the Hearing Officer found that “some” of the relevant public would know Antrim was a geographical term. By implication this suggests “some” would not know it was such a term and for this group the concept might be different. While I have some sympathy with this point, I think it puts too much weight on the word “some” as there was nothing elsewhere in the Hearing Officer’s decision to suggest that she thought there were two relevant publics.
25. The immediate problem with Mr Tariq’s central submission is that his suggestion as to the ‘correct’ concept (Scottishness) makes no sense when linked to a place (Antrim) which will be known by the average consumer to be in Northern Ireland. I therefore think the Hearing Officer was right to reject his suggestion as to the conceptual meaning of the words GLENS OF ANTRIM.
26. Mr Tariq goes on to submit that there was no evidence before the Hearing Officer upon which she was properly able to conclude that the average consumer would find the concept to be glens (valleys) in Antrim.
27. It is true that the Hearing Officer adopted the meaning proposed in the Respondent’s skeleton argument and did so without any evidence being led on the issue. But the Hearing Officer was presented with no evidence from either party as to the conceptual meaning of GLENS OF ANTRIM and as I said in *Brewdog* (O/48/18) at [13]:

Hearing Officers routinely rely on their own experience when making findings of fact. Indeed, as the quality of evidence filed by parties is sometimes so poor (or there is none at all), Hearing Officers are often compelled to make findings of fact without evidence at all as otherwise the outcome of oppositions might be arbitrary or capricious.....
28. Furthermore, once a Hearing Officer has used their own experience to make a finding it is not for an Appointed Person to substitute their own experience on the matter for that of the Hearing Officer. This is because there is no reason for the personal experience of an Appointed Person to be of a higher order than that of the Hearing Officer: *O2 Holdings Ltd’s TM App* [2011] RPC 22, [60].
29. In light of the lack of any evidence, the conclusion reached by the Hearing Officer seems to be entirely proper. I therefore reject the second ground of appeal.

Ground 3: Purchasing process

30. The Appellant’s third ground of appeal, which was actually argued fourth before me, is that the Hearing Officer did not give enough weight to the circumstances where the mark is spoken in pubs, bars and clubs. On this point, Mr Tariq submits that too much weight was given to the visual and conceptual differences and not enough to the aural similarity.

31. It is clear the Hearing Officer took account of aural considerations when assessing the likelihood of confusion (see [70]) and she had found earlier that the goods would be sold in pubs, bars, clubs and restaurants (see [47]) and that there is an aural component especially for ordering drinks in a bar setting ([48]). It is apparent, therefore, that the Hearing Officer considered all the right issues and her conclusion is within the bounds of rationality. I therefore reject the third ground of appeal.

Ground 4: The apostrophe

32. The Appellant submits that the Hearing Officer put too much weight on the possessive apostrophe in the earlier mark GLEN'S and GLEN's VODKA (at [73]). Initially, Mr Tariq submitted that the apostrophe was a mere typographical difference which would go unnoticed by the average consumer and so the Hearing Officer erred in her finding that GLEN'S would be seen as the possessive form of a personal name.

33. At the hearing, I identified various cases where the General Court put significant weight on an apostrophe in a mark. I therefore allowed the parties to make written submissions on this issue.

34. Mr Tariq, in his written submissions accepts that there are numerous cases where a name followed by an apostrophe and the letter "s" is likely to be understood by the relevant public as a reference to a person of that name in the possessive case: T-763/17 *Septona v EUIPO*, EU:T:2018:861, [66] and [68]; T-198/21 *Ancar Group GmbH v EUIPO*, EU:T:2022:83, [34]; T-24/22 *Bensoussan v EUIPO*, EU:T:2023:54, [54]; and T-118/23 *House of Prince v EUIPO*, EU:T:2024:778, [64]. Further, he accepts that an apostrophe followed by the letter "s" can play an important role in the overall impression of a mark and conceptual differences can arise from the absence of the apostrophe followed by the letter "s" from the mark being compared (T-118/23 *House of Prince v EUIPO*, [46] and [100]) and this is particularly the case when the marks are of limited length (T-198/21 *Ancar Group GmbH v EUIPO*, [31] and [34]). He further points to authority that the presence of the apostrophe has no influence on pronunciation: T-763/17 *Septona v EUIPO*, [59]; and T-198/21 *Ancor Group GmbH v EUIPO*, [42]).

35. Mr Tariq appears to accept this body of case law is against him. But he submits that the registry has departed from the approach of the General Court; he relies on a single decision *BIM'S* (O/1090/24). At the outset, I see nothing in that decision to suggest the Hearing Officer had any of these cases referred to him and so I am not sure it can be seen as a deliberate departure. In any event, how an apostrophe is viewed is going to be fact dependent and in light of the case law from the General Court it is clear the Hearing Officer was not acting irrationally by giving the apostrophe the weight she did.

36. I therefore dismiss this ground of appeal as well.

Ground 5: The likelihood of confusion

37. The final ground of appeal is put on two bases. First, that the earlier errors made the Hearing Officer's assessment of the likelihood of confusion flawed and the second is that in any event the conclusion gave too much weight to the visual and conceptual meaning.

In light of my earlier conclusions the first of these falls away. In relation to the second, during the hearing (and so in my reasoning), this was dealt with as part of the third ground of appeal. I therefore reject this final ground as well.

Conclusion

38. I have dismissed the appeal in its entirety and so the opposition fails. As the Respondent has been successful, I order the Appellant to make a contribution to the costs of the Respondent in the sum of £3,000 to be paid by 4pm on 2 March 2026.

PHILLIP JOHNSON
THE APPOINTED PERSON
16 February 2026

Representation

For the Appellant: Usman Tariq KC (instructed by Keltie)
For the Respondent: Sam Carter (instructed by Lewis Silkin (NI) LLP)