

O/0129/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATIONS UK3861990 AND UK3862008

BY AALTO HAPS LIMITED

TO REGISTER THE TRADE MARKS:

AALTO HAPS

AALTOPORT

IN CLASSES 9, 12, 19, 35, 37, 38, 39, 40, 42 & 45

AND

THE OPPOSITIONS THERETO

UNDER NOS. 440206 AND 440207

BY AVEALTO LIMITED

Background and pleadings

1. On 22 December 2022, AALTO HAPS Limited (“the applicant”) applied to register the following trade marks:

UK3861990

AALTO HAPS

UK3862008

AALTOPORT

The applications were published for opposition purposes on 13 January 2023. Registration is sought for the following goods and services for both marks:

Class 9: Software especially autonomous flight software; antennas and aerials as communications apparatus; antennas for wireless communications apparatus; radio signal antennas; telecommunications antennas; computer terminals; data terminals, receiving terminals for signals; data entry terminals; data exit terminals.

Class 12: Aircraft especially high altitude aircraft; launching gear for air vehicles especially for high altitude aircraft; launching platforms for air vehicles especially high altitude aircraft; high altitude aircraft launch systems.

Class 19: Non-metal launching platforms for aircraft especially for high altitude aircraft.

Class 35: Transportation fleet (business management of -) [for others] especially aircraft fleet management services.

Class 37: Aircraft maintenance and repair services.

Class 38: Telecommunication services especially telecommunication via telephone, radio, television, video-telephony, satellites, computer networks, the public internet, and high altitude aircraft; broadband radio communication services; network transmission connectivity services; wireless broadband communication services; provision of broadband telecommunications access; broadband connectivity services; telecommunication access services; providing access to telecommunication networks; providing access to computer networks; teleport management services; internet service provider services.

Class 39: Air transportation services especially for high altitude aircraft payloads; freight air transportation services especially for high altitude aircraft payloads; cargo air transportation especially for high altitude aircraft payloads; passenger air transportation especially for high altitude aircraft payloads; air transportation services especially aircraft payload development services; freight air transportation services especially aircraft payload development services; cargo air transportation especially aircraft payload development services; passenger air transportation especially aircraft payload development services.

Class 40: Custom manufacturing of aircraft especially high altitude aircraft.

Class 42: Earth science services especially earth observation services; environmental surveys; environmental testing; environmental consultancy services ; environmental hazard assessment; environmental assessment services; environmental monitoring services; compilation of environmental information; airborne remote monitoring relating to environmental explorations; airborne remote sensing relating to environmental explorations; compilation of information relating to environmental conditions; research in the area of environmental protection; research in the field of environmental conservation; environmental protection (Research in the field of -); research in the field of environmental protection; technical consultancy in the field of environmental science; technical consulting in the field of environmental engineering; engineering services in the field of environmental technology; environmental

testing services to detect contaminants in water; consultancy services relating to research in the field of environmental protection; design and development of software especially autonomous flight software.

Class 45: Security monitoring services

2. AVEALTO LIMITED (“the opponent”) opposed both of the trade mark applications on 13 April 2023. The oppositions are based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) against all applied for goods and services.

3. The opponent relies on the following trade mark:

UK30000330

Avealto

Filing date: 3 April 2014

Registration date: 19 July 2013

Relying on all services for which it is registered as follows:

Class 38: Telecommunications.

4. The opponent claims that the dominant elements of the marks are similar, and the goods and services are either identical or similar and that this will give rise to a likelihood of confusion.

5. The applicant filed a counterstatement in which it denied the claims made by the opponent and requested the opponent provided proof of use of their mark.

6. The applicant is represented by White & Case.¹ The opponent is represented by Stevens & Bolton LLP.

7. Both parties filed evidence in these proceedings. A hearing was requested by the opponent, and this took place on 5 February 2025. Guy Hollingworth, of Counsel, appeared on behalf of the opponent, and David Stone appeared on behalf of the applicant. This decision is therefore taken following careful consideration of the submissions at the hearing and the papers before me.

8. 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 Issue

9. At the hearing, Mr Hollingworth raised an issue with a section of Mr Stone's skeleton argument, on behalf of the applicant, titled "credibility of Walt Anderson's witness statements". I note from the history of the matter (and detailed in the skeleton arguments and submissions) that the applicant filed a request to cross-examine the evidence of Mr Anderson. This request was refused by the Registry on 12 July 2024 (as highlighted by Mr Hollingworth). A CMC was offered if either party wished to challenge the refusal, but no CMC was requested.

10. Mr Hollingworth stated that it should "not now be open by the back door, [for the applicant] to make those criticisms [of the opponent's witness evidence], which it was refused the opportunity to make in cross-examination, because that is actually the worst of all worlds, because now Mr Anderson has not been given an opportunity to respond to any of those points".² He then invited me to disregard that section of the

¹ I note that the representative of the applicant has changed since the hearing took place and they were originally represented by Allen & Overy

² Page 3 of the Hearing Transcript

applicant's skeleton argument, submitting that I would need to weigh the evidence and Mr Stone's submissions, but that I must not go so far as the "serious allegations" about credibility.

11. Mr Stone responded that it was important to avoid a situation whereby the applicant could not challenge or criticise the evidence put forward by the opponent, but was content to state there are parts of Mr Anderson's witness statement that are not correct or are unsupported.

12. I stated at the hearing that I would proceed on the basis that I would evaluate the evidence as it appeared before me and would not be considering anything outside of that nor any accusations that Mr Anderson was not given the opportunity to respond to. I will also of course not refer to evidence that I do not consider assists the decision before me.

Evidence

13. The opponent provided their evidence in chief in the form of a witness statement from Mr Walt Anderson, the sole director, CEO and founder of the opponent. This statement is dated 20 November 2023 and is accompanied by 42 exhibits. The main purpose of this evidence is to show use of the earlier mark.

14. The applicant's evidence is a witness statement from Jonathan Adams, the director of commercial, strategy & planning at Aalto Haps Limited. The statement is dated 12 February 2024 and accompanied by 20 exhibits.

15. The opponent filed evidence in reply by way of a second witness statement from Mr Anderson, dated 27 March 2024 and accompanied by a further 7 exhibits.

DECISION

Section 5(2)(b)

16. Section 5(2)(b) is being relied upon and is as follows:

“5(2) A trade mark shall not be registered if because-

(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”.

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.”

17. By virtue of its earlier filing date, the opponent’s mark qualifies as an earlier mark, in accordance with section 6(1)(a) of the Act. The earlier mark had been registered for more than five years before the priority date of the contested mark and is subject to the use requirements, per section 6A of the Act. The applicant requested that the opponent provides proof of use for the mark.

18. For reasons that will become apparent later in this decision, I do not consider that the issue of proof of use will be determinative in these proceedings, and I will conduct my assessment on the basis that the opponent can rely upon the full breadth of its specification. For the avoidance of any doubt, I have noted within the evidence from the opponent, that they have shown significant efforts to prepare to use their mark including large amounts of investment, advertising, test flights and an effort to get the product tested with the relevant authorities, all of which would likely have led to a finding of use. I do not therefore make any finding ruling out the possibility that, in the evidence of actual and “genuine use” of the earlier mark, the opponent might successfully have argued that there are proper reasons for non-use.³

³ As provided under section 6A(3)(b).

Case law

19. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(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 goods and services

20. I note that the applicant's specification contains the term 'telecommunication services especially telecommunication via telephone, radio, television, video-telephony, satellites, computer networks, the public internet, and high altitude aircraft' in class 38. 'Especially,' within the term, serves as a suggestion, and does not narrow the term in anyway; as such, the applicant has telecommunication services as a whole.

21. Both parties have 'telecommunications services/telecommunications' within class 38 (as accepted by the applicant at the hearing), which are identical. Consequently, I will not undertake a full comparison of the goods and services and will proceed on the basis that the parties' specifications include some identical aspects. If the opposition fails even where the services are identical, it will also fail where the goods and services are only similar (and of course where the applicant's goods or services are not similar to the opponent's sole registered services "*Telecommunications*").

Average consumer and the purchasing act

22. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

23. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

24. At the hearing, both parties agreed that the average consumers will be professional/commercial entities and that the goods and services at issue are highly sophisticated. Mr Stone argued that the relevant average consumer will pay "a very high level of attention prior to making a highly considered purchase".⁴ I agree that the selection and purchase of the goods and services will involve at least a high degree of attention on the part of the average consumer.

25. The parties did not make particular submissions on the purchasing process, but I think it reasonable to assume that the goods and services are likely to be purchased following the perusal of specialist websites and advertising literature. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a member of the company or through trade conferences.

Comparison of the marks

26. 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:

⁴ Paragraph 52 of his skeleton argument.

“.....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.”

27. 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.

28. The respective trade marks are shown below:

Contested marks	Earlier mark
<p data-bbox="204 1025 379 1059"><i>UK3861990</i></p> <p data-bbox="320 1137 667 1189">AALTO HAPS</p> <p data-bbox="204 1283 379 1317"><i>UK3862008</i></p> <p data-bbox="328 1395 659 1447">AALTOPORT</p>	<p data-bbox="970 1122 1225 1173">AVEALTO</p>

29. The earlier mark is a singular word mark and therefore, that is where the overall impression lies.

30. Regarding the 990 mark, which is split into two words, the opponent stated that “HAPS” is entirely descriptive in the industry - that is, it stands for ‘High Altitude Platform Station’. This indeed appears the case from the evidence provided, and I therefore accept that a significant proportion of the average consumers of the goods and services at issue may recognise the terms as a descriptive, at least in respect of some of the goods and services. This would therefore mean that ‘AALTO’ is the

dominant and distinctive element of this contested mark with 'HAPS' playing a lesser role. The presence of the HAPS element is certainly not negligible, and not all consumers would perceive it as descriptive, especially where the goods or services have no necessary or self-evident connection to a High Altitude Platform Station (for example *Security monitoring services*; or *environmental hazard assessment*).

31. In respect of the 008 mark, this is presented as one word and, therefore, it is not for me to dissect them as suggested by the parties. The overall impression lies in the word as a whole.

32. Visually, all three marks share the letters 'ALTO' presented together. However, they have different placements in the marks. In the contested marks, 'ALTO' is near the beginning and is only preceded by the letter 'A'. Whereas in the earlier mark, 'ALTO' comes at the end. All marks begin with the letter 'A', but the contested marks contain 'HAPS' and 'PORT' respectively which have no counterpart in the earlier mark. The earlier mark begins with 'AVE' which has no replica in the contested marks. 'AALTO HAPS' is also presented as two words whereas the earlier mark is presented as one. Overall, I therefore find the marks visually similar to a low degree at best.

33. Turning to the aural comparison, I consider that the earlier mark will likely be pronounced as per the parties' submissions as "AH-VEE-ALTO". The beginning of the contested marks are likely to be pronounced as either "ALTO", or with a perhaps with the longer A sound, closer to "ARLTO". The pronunciation of the endings "HAPS" and "PORT" is clear. The marks coincide in so far as they contain 'ALTO', which will likely be pronounced identically. However, as stated above, the placement of 'ALTO' differs between the contested and earlier marks, and the other elements provide further points of difference. Therefore, I consider the marks to be aurally similar to between a low and medium degree.

34. Both parties made submissions that the marks at issue are invented terms or have no specific meaning. This would mean that a conceptual comparison is not applicable. I note that the opponent has submitted that 'ALTO' connotes height or altitude and as this is included in all the marks, there would be some level of similarity. Even if I accept

this argument, that is the only point of similarity between them, and all marks at issue contain further elements which do not share any conceptual similarities.

Distinctive character of the earlier trade

35. 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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 promotion of 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).”

36. 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 and 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 there have currently been no sales under their mark. Therefore, I cannot make a finding of enhanced distinctiveness.

37. The opponent's mark 'AVEALTO' is clearly an invented term. I have mentioned above that the opponent submitted that 'ALTO' connotes height or altitude, but even if I accept that as the case - and, too, that the average consumer would perceive that to be case within the mark as a whole - it is not descriptive of telecommunications in class 38 generally nor is it particularly allusive to those services. Therefore, I find the mark to be inherently distinctive to a high degree.

Likelihood of Confusion

38. 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 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 factors are interdependent, and, for instance, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier 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 he has retained in his mind.

39. I take note of the following factors in my consideration of whether a likelihood of confusion arises in the present case:

- The earlier mark is a singular word mark and that is where the overall impression lies.
- For the 'AALTO HAPS' mark, I have found 'AALTO' is the dominant and distinctive element of this contested mark with 'HAPS' playing a lesser role. In respect of 'AALTOPORT' the overall impression lies in the word as a whole.

- I have found that at least some of services to be identical.
- I have found the purchasing process will be primarily visual and that the marks are visually similar to a low degree at best; I have found the marks to be aurally similar to between a low and medium degree. Conceptually, the words may, potentially, overlap in the meaning of 'ALTO', but both the contested marks and the earlier mark contain further conceptual content which share no conceptual similarities.
- The parties agreed that the average consumer will be professional/commercial entities and that the goods and services at issue are highly sophisticated. Consumers will pay a high level of attention during the purchasing process.
- The earlier mark is inherently distinctive to a high degree.

40. While I bear in mind the premise that it is unlikely the average consumer will come across the marks side by side in the market, I consider that even where the goods and services are identical, the visual and aural differences between the marks will prevent the average consumer from mistaking one mark for the other. The overlapping visual and aural elements are found at different places within the marks and there is no strong conceptual hook to connect them. Although I have found there to be a high level of attention paid by the average consumer, I find that even if a lower degree of attention were to be paid, this would not be enough to overcome the abovementioned differences. Therefore, I consider there to be no likelihood of direct confusion.

41. I will therefore turn to look at indirect confusion. Again, I take guidance from Mr Purvis in *L.A. Sugar Limited* where he stated:

“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”).

42. These examples are not exhaustive but provide helpful focus as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

“This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.”⁵

43. The common element between the marks are the letters ‘ALTO’ which is not so highly distinctive that no other party could be using it as a trade mark at all. Secondly, the differences between the marks (i.e. the different placement of the common element and the different extra content - the letter ‘A’, HAPS, PORT and AVE) are not non-distinctive and are therefore not likely to be seen as sub-brands or a logical brand extension. I can see no other reason why the average consumer would view the marks as coming from the same undertaking or indicating the same or related brands. Even if the average consumer, upon seeing the shared letters, calls to mind the other mark, this would be mere association and not indirect confusion.⁶ Therefore, I find there to be no likelihood of indirect confusion.

⁵ Paragraph 12

⁶ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

Conclusion

44. The oppositions under 440206 and 440207 fail in their entirety, subject to any successful appeal and the contested marks may proceed to registration.

Costs

45. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023, as these proceedings commenced after 1 February 2023.

Considering the Notices of opposition and preparing the counterstatements	£400
Preparing evidence and considering and commenting on the other side's evidence	£1100
Preparing for and attending a hearing	£1000
TOTAL	£2500

46. I therefore order AVEALTO LIMITED to pay AALTO HAPS Limited the sum of £2500. This 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 18th day of February 2026

L Nicholas
For the Registrar