O/0158/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO UK4077710

BY MADE BY BRAVE LIMITED

TO REGISTER:

ANCIENT + BRAVE TRUE HYDRATION

AS A TRADE MARK IN CLASS 5

AND

AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO 451217
BY 5-HOUR INTERNATIONAL CORPORATION PRIVATE LIMITED

BACKGROUND AND PLEADINGS

1. On 19 July 2024, ("the applicant") Made By Brave Limited applied to register the trade mark shown on the cover of this decision ("the applicant's mark") in the UK for the following goods:

> Class 5: Dietetic food and substances adapted for medical use; Dietary supplements and dietetic preparations; Dietary supplements for human beings; Food supplements; Nutritional supplements; Vitamin and mineral supplements; Herbal supplements; Wellbeing supplements; Fitness and endurance supplements; Food supplements for non-medical purposes; Dietary supplements for a cosmetic effect; Dietetic products for medical purposes; Dietetic foods for clinical nutrition; Dietary food supplements; Dietary supplements consisting of vitamins; Food supplements consisting of amino acids; Nutraceuticals for use as a dietary supplement; Health food supplements for persons with special dietary requirements; Dietary supplement drinks; Dietary supplemental drinks; Dietary supplement drink mixes; Dietetic beverages adapted for medical purposes; Dietetic infusions for medical use; Medical preparations and articles; Pharmaceutical and natural remedies; Herbal medicine; Herbal tea for medicinal use; Plant and herb extracts for medicinal use; Extracts of medicinal plants.

2. The application was published for opposition purposes on 6 September 2024, and it was opposed by 5-hour International Corporation Private Limited ("the opponent") on 6 December 2024. The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and opposes the application in its entirety. The opponent relies on the following marks in relation to the ground of opposition:

TRUE HYDRATION

UK00003944552
Filing date 11 August 2023: date of entry in register 2 February 2024
Priority date 15 February 2023 from trade mark 9779613 registered in the USA
Relying on all of its goods, namely:

Class 5: Supplements having health benefits, namely, beverages having minerals and other ingredients namely Calcium Citrate Malate, Magnesium Glycinate, Potassium Chloride, Taurine, L-Serine, Potassium Sorbate, Citric Acid, Sucralose, fruit flavorings, coffee flavorings, tea flavorings.

Class 32: Beverages, namely, beverages having minerals and other ingredients namely Calcium Citrate Malate, Magnesium Glycinate, Potassium Chloride, Taurine, L-Serine, Potassium Sorbate, Citric Acid, Sucralose, fruit flavorings, coffee flavorings, tea flavorings.

True
Hydration

UK00003949874
Filing date 25 August 2023; date of entry in register 2 February 2024
Priority date 3 March 2023 from trade mark 97821463 registered in the USA
Relying on all of its goods, which are the same as those listed in the mark above.

TRUE
Sports Hydration

UK00003958842
Filing date 20 September 2023; date of entry in register 19 January 2024
Priority date 28 August 2023 from mark 98152918 registered in the USA
Relying on all of its goods, namely:

Class 5: Supplements having health benefits, namely beverages having minerals and other ingredients.

Class 32: Beverages, namely nonalcoholic beverages having minerals and other ingredients.

TRUE Sports Hydration
UK00003958784
Filing date 20 September 2023; date of entry in register 16 February 2024
Priority date 28 August 2023 from mark 98152915 registered in the USA
Relying on all of its goods, which are the same as those listed in the mark above.

3. Under its 5(2)(b) ground, the opponent claims that due to the similarity between the parties' marks and the identity and/ or similarity of the goods at issue, there exists a likelihood of confusion on the part of the relevant public, which includes the likelihood of association.

4. Given the filing dates, the opponent's marks qualify as earlier marks, in accordance with section 6 of the Act. As they have not been registered for five years or more at the filing date of the application, they are not subject to the proof of use provisions set out in section 6A of the Act. Consequently, the opponent may rely upon all of the goods for which the earlier marks are registered without having to establish genuine use.

5. The opponent is represented by Withers & Rogers LLP; the applicant is represented by Legal Studio Solicitors. Neither party filed evidence; however, the applicant filed submissions in the evidence rounds. No hearing was requested. Only the opponent filed submissions in lieu of a hearing. The decision is taken following a careful consideration of all of the papers.

6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

MY APPROACH

7. Looking at the opponent’s earlier marks, it appears that the earlier mark UK00003944552 ‘TRUE HYDRATION’ and its respective class 5 and 32 goods are the closest in terms of similarity with the applicant’s mark and the class 5 goods at issue. Accordingly, I am of the view that if the opposition is not successful relying on the ‘UK00003944552’ mark, it would not be successful in relation to the remainder of the marks that are relied upon by the opponent. This is because the remainder of the marks would not put the opponent in a better position. Therefore, I will conduct my assessment relying on the aforementioned mark and will return to the other marks relied upon at a later point, if necessary.

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

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 or association with the earlier trade mark.”

9. 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 impression 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 THE GOODS

The applicant's goods	The opponent's goods
Class 5: Dietetic food and substances adapted for medical use; Dietary supplements and dietetic preparations; Dietary supplements for human beings; Food supplements; Nutritional supplements; Vitamin and mineral supplements; Herbal supplements; Wellbeing supplements; Fitness and endurance supplements; Food supplements for non-medical purposes; Dietary supplements for a cosmetic effect; Dietetic products for medical purposes; Dietetic foods for clinical nutrition; Dietary food supplements; Dietary supplements consisting of vitamins; Food supplements consisting of amino acids; Nutraceuticals for use as a dietary supplement; Health food supplements for persons with special dietary requirements; Dietary supplement drinks; Dietary supplemental drinks; Dietary supplement drink mixes; Dietetic beverages adapted for medical purposes;	Class 5: Supplements having health benefits, namely, beverages having minerals and other ingredients namely Calcium Citrate Malate, Magnesium Glycinate, Potassium Chloride, Taurine, L-Serine, Potassium Sorbate, Citric Acid, Sucralose, fruit flavorings, coffee flavorings, tea flavorings. Class 32: Beverages, namely, beverages having minerals and other ingredients namely Calcium Citrate Malate, Magnesium Glycinate, Potassium Chloride, Taurine, L-Serine, Potassium Sorbate, Citric Acid, Sucralose, fruit flavorings, coffee flavorings, tea flavorings.

Dietetic infusions for medical use; Medical preparations and articles; Pharmaceutical and natural remedies; Herbal medicine; Herbal tea for medicinal use; Plant and herb extracts for medicinal use; Extracts of medicinal plants.	

10. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (GC) stated:

> "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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

11. The opponent submits that the applicant's goods are *Meric* identical to those covered by its earlier marks. It submits this to be the case on the basis that they share the same nature, end users, methods of use and are in competition with one another. *Meric* identicality does not take into consideration those factors that have been outlined by the opponent; rather, as stated in the case law above, *Meric* identicality occurs when the applicant's goods fall within the more general category of the opponent's goods or vice versa.

12. Despite this, I consider that, for example, the applicant's *"dietary supplemental drinks"* would encompass the term *"supplements having health benefits, namely, beverages having minerals and other ingredients namely Calcium Citrate Malate, Magnesium Glycinate, Potassium Chloride, Taurine, L-Serine, Potassium Sorbate, Citric Acid, Sucralose, fruit flavorings, coffee flavorings, tea flavoring"* that appears in the opponent's specification. Therefore, I find these goods to be identical in line with the principle set out in *Meric.* For reasons which will become clear, I shall proceed on the basis that all of the applicant's goods are

identical to the goods within the opponent's specification. If the opponent is unable to succeed on this basis, it will be in no better position if its goods are only to be regarded as similar to those of the applicant.

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

13. As the law above indicates, it is necessary for me to determine who the average consumer is for the parties' goods. I must then determine the manner in which the goods 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' 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."

14. Neither party has made express submissions concerning the average consumer and the purchasing process. Nevertheless, I consider that the average consumer for the goods at issue will most likely be the general public. The goods are sold through a range of channels, including pharmacies and supermarkets, via physical stores and online. The overlapping goods are likely to be self-selected from the shelves of such stores and will be a predominantly visual purchase, although I do not discount oral considerations such as advice from sales representatives. Given the nature of the goods, they are likely to be selected in order to boost the users' dietary needs. Overall, I consider a medium degree of attention will be paid during the purchase of the goods at issue.

COMPARISON OF THE MARKS

The applicant's mark	The opponent's mark
ANCIENT + BRAVE TRUE HYDRATION	TRUE HYDRATION

15. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to all the overall impressions created by the trade 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."

16. 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.

17. The applicant submits that the elements 'True' and 'Hydration' that appear in its mark *"has equal proportions and dominance",*[1] and that the words in the opponent's mark are *"all in equal dominance."*[2] Confusingly, the applicant also submits that the words 'ANCIENT + BRAVE' play a dominant role in the opponent's mark.[3] The opponent does not comment on the overall impression of the marks.

[1] Applicant's submissions, paragraph 18
[2] Applicant's submissions, paragraph 21
[3] Applicant's submissions, paragraph 23.1.2

18. The applicant's mark is a word mark that consists of the text 'ANCIENT + BRAVE TRUE HYDRATION.' For those goods at issue that are not related to beverages, I consider that the overall impression of the mark lies in the mark as a whole. However, for the goods that are related to beverages, I consider that the words 'ANCIENT + BRAVE' play a greater role in the overall impression of the mark, with the words 'TRUE HYDRATION' playing a lesser role. This is on the basis that 'TRUE HYDRATION' will be perceived as allusive/non-distinctive in relation to the goods at issue. I consider that the overall impression of the mark lies in the combination of those elements. The opponent's mark is a word mark that consists of 'TRUE HYDRATION,' I consider that the overall impression of the mark lies in the mark as a whole. As plain word marks, the marks are protected in whichever form, colour and typeface they are used in.[4]

19. Visually, the opponent submits that the marks are highly similar.[5] In contrast, the applicant, despite the admission that the marks share the words 'True Hydration', submits that the marks are dissimilar, or in the alternative, similar to a very low degree. I disagree with both parties. I note that the marks share the words 'TRUE HYDRATION' and they differ in the presence of the words 'ANCIENT + BRAVE' in the applicant's mark. Taking the above into account, I consider the marks to be visually similar to a medium degree.

20. Aurally, the opponent also submits that the marks are highly similar.[6] The applicant in contrast, submits that the marks are similar to a very low degree.[7] I disagree with both parties. The marks will share the ordinary pronunciation of 'TRUE HYDRATION' and differ in the ordinary pronunciation of ANCIENT AND (which is how the + sign will be pronounced) BRAVE. Therefore, I consider the marks to be aurally similar to a medium degree.

21. Conceptually, the applicant submits that the marks will be dissimilar or share a very low degree of similarity. This is on the basis that the opponent's mark conveys the meaning of *"optimal fluid balance within the body, ensuring water is effectively absorbed and utilised at a cellular level."* Whereas it submits that its mark has an *"additional purely fanciful element which has no conceptual or semantic meaning in*

[4] *La Superquimica v EUIPO,* Case T-24/17, paragraph 39.
[5] Opponent's submission in lieu, paragraph 11
[6] Opponent's submissions in lieu, paragraph 11
[7] Applicant's submissions, paragraph 23.1.3

relation to the opposed goods".[8] The opponent submits that its mark is not dictionary defined as a term but that the words 'TRUE' and 'HYDRATION' should be given their ordinary dictionary meanings. In relation to the applicant's mark, the opponent submits that 'ANCIENT + BRAVE' will be viewed as merely a business name and the interpretation of 'TRUE HYDRATION' above should be applied.[9]

22. I agree with the opponent that 'TRUE HYDRATION' is not a dictionary defined term and that the words separately have independent recognisable meanings in the English language. However, I consider that when combined they create the concept of accurate or exact hydration. Given the nature of the goods, I consider that the mark is allusive for all of the opponent's goods and some of the applicant's goods at issue. I consider that this conceptual meaning will be attributed to both of the marks at issue. The ordinary dictionary words ANCIENT + (AND) BRAVE in the applicant's mark will act as points of conceptual difference. Whilst I acknowledge that 'TRUE HYDRATION' is identically present in the marks, I find that due to the allusive nature of these elements, this does not equate to a strong point of conceptual similarity. Consequently, I consider the marks to be conceptually similar to between a low to medium degree.

DISTINCTIVE CHARACTER OF THE OPPONENT'S MARK

23. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

[8] Applicant's submissions, paragraph 23.1.4
[9] Opponent's submissions in lieu, paragraph 20-23

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)."

24. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not provided any evidence in support of enhanced distinctiveness, consequently, I only have the inherent distinctiveness of the mark to consider.

25. The opponent's mark is a word mark that consists of TRUE HYDRATION, therefore, the inherent distinctive character rests solely in the words themselves. I consider that the reference to hydration is highly allusive for the goods at issue, which are beverages. Taking the above into account, I find the mark to be inherently distinctive to a low degree.

LIKELIHOOD OF CONFUSION

26. 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 first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer of 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.

27. I have found the marks to be visually and aurally similar to a medium degree and conceptually similar to a low to medium degree. I have found the opponent's mark to have a low degree of inherent distinctive character.[10] I have found the average consumer to be the general public. I have found the goods are likely to be selected visually, although, I do not discount an aural component. I have concluded that the degree of attention paid during the purchasing process for the goods will be medium. I have found the goods to be identical.

28. Taking all of the factors into account and even considering the principle of imperfect recollection, I do not consider that the average consumer will mistake one mark for the other. Whilst I acknowledge that the marks share the same common element, being 'TRUE HYDRATION', this element appears at the end of the applicant's mark and is allusive of the opponent's goods and some of the applicant's goods. Further, I remind myself that as a general rule of thumb, consumers are believed to place more emphasis on the initial elements of a mark.[11] Despite the shared element, I consider that the words 'ANCIENT + BRAVE' in the applicant's mark, this will be sufficient to enable the average consumer to differentiate between the respective marks, and will prevent the marks from being mistakenly recalled or misremembered as each other, even when used on identical goods. This is further supported by the visual, aural and conceptual differences between the marks and the vast difference in the length of the marks. Consequently, I do not consider there to be a likelihood of direct confusion between the marks.

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[10] *L'Oréal SA v OHIM*, Case C-235/05 P, in this case it was found that a low degree of distinctive character does not preclude a finding of a likelihood of confusion.
[11] *El Corte Ingles v OHIM* (Municor) (n114), [83]

29. I will now consider whether there is a likelihood of indirect confusion. Indirect confusion involves recognition by the average consumer of the difference between the marks whilst also recognising that they share a common element. Mr Purvis QC in the *L.A Sugar Limited* case sets out that there are three main categories of indirect confusion and that indirect confusion 'tends' to fall in one of them.[12] The three categories are as follows:

> "(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.). BL O/375/10 Page 15 of 16
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> (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)."[13]

30. Whilst I note that the examples set out by Mr Purvis are not exhaustive, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors,*[14] wherein Arnold LJ referred to the comments of James Mellor QC sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he stated that a finding of a likelihood of indirect confusion is not a consolidation prize and that there needs to be a reasonably special set of circumstances in order to get indirect confusion where there is no likelihood of direct confusion. Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

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[12] Paragraphs 16 & 17 of *L.A Sugar Limited v By Black Beat Inc*, Case BL-O/375/10
[13] Ibid, Paragraph 17
[14] [2021] EWCA Civ 1207

31. In the present case, I am of the view that when confronted with the parties' marks, consumers would identify them as originating from different and economically unconnected undertakings. I say this because the marks differ greatly in length, the difference between the marks is located at the beginning of the applicant's mark and I cannot see the differences between the marks being attributed to any of the non-exhaustive *L.A. Sugar* examples or any other that I can identify. I see no reason why a consumer would believe that the differences between the marks are logical indicators of a sub-brand or brand extensions of one another and to do so would mean that I would need to find that the word 'TRUE HYDRATION' has an independent distinctive character within the respective marks and I have already found that it does not. I do not consider that a consumer would consider it logical for an undertaking called 'TRUE HYDRATION' to alter its brand to ANCIENT + BRAVE TRUE HYDRATION, or vice versa. I appreciate that when the consumer views the applicant's mark, the shared use of 'TRUE HYDRATION' may call to mind the opponent's mark, however, this is mere association, not indirect confusion.[15] In addition, I do not consider that the shared element (the words TRUE HYDRATION) is so strikingly distinctive that it would be seen as something that only one undertaking would use. I consider that the consumer would merely perceive the shared use of TRUE HYDRATION to be coincidental, even when considering the fact that the marks would be used for goods that are identical. Further, I note that the opponent has not claimed or filed evidence in support of enhanced distinctiveness, so the inherent distinctiveness lies at a low degree. Taking all of this into account, together with the comments of Arnold LJ and Mr Mellor Q.C. in the preceding paragraph, I find that there exists no likelihood of indirect confusion between the marks at issue.

FINAL REMARKS

32. As I have found no likelihood of confusion in relation to the application and the opponent's UK00003944552 mark, which placed the opponent in a better position, there is no additional benefit to me considering the opponent's other earlier marks. This is because if the opponent was not successful in relying on the aforementioned

[15] See *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17

mark, it would not be successful in relation to the remainder of the marks that are relied upon by the opponent.

CONCLUSION

33. For the reasons indicated above, the opposition based on section 5(2)(b) fails and is dismissed accordingly.

COSTS

34. 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. In the circumstances, I award the applicant the following sum, calculated as follows:

Preparing a notice of defence and counterstatement and considering the notice of opposition	£250
Preparing submissions and considering the other side’s submissions	£350
Total	**£600**

35. I therefore order 5-hour International Corporation Private Limited to pay Made By Brave Limited the sum of £600. 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 26th day of February 2026

A KLASS
For the Registrar