

O/0166/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO.  
WO0000001722630  
DESIGNATING THE UK  
IN THE NAME İZZET TAVAŞI  
FOR THE TRADE MARK:

**aquasera**

IN CLASS 32

AND

IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. OP000449723  
BY ROXANE UK LIMITED

## **Background and pleadings**

1. The international registration shown on the cover page of this decision (“the IR”) was registered on 29 December 2022 in the name of **AKTİF GIDA MEŞRUBAT SANAYİ VE TİCARET ANONİM ŞİRKETİ**<sup>1</sup> (“the Holder”). The Holder designated the UK as a territory in which it sought to protect the IR pursuant to the Protocol to the Madrid Agreement on 20 December 2023. Protection is sought for the following goods.

Class 32: Mineral water, spring water, table water, soda water; fruit juices and vegetable juices [beverages], fruit and vegetable concentrates for making beverages and non-alcoholic fruit extracts for making beverages, soft drinks; energy drinks; protein-enriched sports beverages.

2. On **19 September 2024**, **Roxane UK Limited** (“the Opponent”) opposed the designation under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the Holder’s goods in the designation.
3. The Opponent relies upon the following trade mark:



UK Trade Mark registration number UK00003613021

Filing date: 19 March 2021

Registration date: 23 July 2021

Relying on goods in class 32, namely:

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<sup>1</sup> The International Trade Mark registration was transferred to İZZET TAVAŞI who confirmed undertakings in an email dated 10 March 2025.

Class 32: Mineral and aerated waters; fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars, non-alcoholic; soda; aperitifs, non-alcoholic.

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark within the meaning of section 6 of the Act. However, as it had not been protected for five years or more at the designation date, it is not subject to the proof of use requirements specified within section 6A of the Act.
5. In its notice of opposition, the Opponent submits that the Holder's mark is highly similar to its mark and has been applied for in respect of identical, or if not identical, highly similar goods to those covered by the earlier registration.
6. The Holder, in its counterstatement, denied that the marks are similar. However, it does admit that the respective goods are similar.
7. The Opponent is represented by Haseltine Lake Kempner LLP, and the Holder is represented by Mathys & Squire LLP. Both parties filed evidence in chief in these proceedings, however the Opponent also filed evidence in reply. Neither party requested a hearing, however 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**

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.

## **EVIDENCE**

9. The Opponent's evidence consists of the witness statement of Laurent Claire dated 31 January 2025 and is accompanied by 21 exhibits (LC01 – LC21). Mr Claire is the legal director of the parent company of Roxane UK Limited, the Opponent. The purpose of the evidence is to demonstrate to the Registry that the Opponent's earlier mark possesses an enhanced level of distinctive character.
  
10. The Holder's evidence consists of the witness statement of Emma Pallister dated 3 April 2025 and is accompanied by 10 exhibits (EP1 – EP10). Ms. Pallister is employed by the Holder's representatives Mathys & Squire LLP. The evidence contains dictionary definitions for the word 'AQUA', as well as screenshots of websites showing use of the word 'AQUA' in combination with other words, which the Holder's submits, demonstrates that the average consumer is accustomed to seeing the term as a descriptive reference in relation to the goods concerned. Finally, Exhibit EP10 contains examples of UK trade mark registrations in class 32 that consist of the word 'AQUA' accompanied by another word.
  
11. The Opponent filed evidence in reply to the Holder's evidence which consists of the witness statement of Flora Hachemi, a trade mark attorney at Haseltine Lake Kempner LLP who represent the Opponent, and is accompanied by 4 exhibits (FH1 – FH4). The evidence contains dictionary extracts for the word 'aqua', extracts of market research and brand surveys conducted by 'Savanta', showing rankings of the UK's "Best Loved Brands" in the drinks sector, as well as an extract from 'YouGov's' "Most Popular Beverages" of 2025. Additionally, the evidence shows screenshots from leading UK retailers' websites showing an exhaustive list of bottled water brands available across the UK. Finally, it contains screenshots from retail websites and the 'Companies House' website for the brands submitted as part of the Holder's evidence.

12. I have taken all of the evidence, as well as the parties' submissions, into consideration in reaching my decision and will refer to them where necessary below.

## **DECISION**

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

13. The opposition is based upon section 5(2)(b) of the Act which reads 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”

14. Section 5A of the Act states as follows:

“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.”

15. 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, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 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; and

(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**

16. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

17. The goods to be compared are:

The Opponent's goods	The Holder's goods
<p><b>Class 32:</b> Mineral and aerated waters; fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars, non-alcoholic; soda; aperitifs, non-alcoholic.</p>	<p><b>Class 32:</b> Mineral water, spring water, table water, soda water; fruit juices and vegetable juices [beverages], fruit and vegetable concentrates for making beverages and non-alcoholic fruit extracts for making beverages, soft drinks; energy drinks; protein-enriched sports beverages.</p>

18. As stated above, the Holder admits that the respective goods are similar, however, it does not say to what degree. For reasons of procedural economy, I will not undertake a full comparison of the goods listed above. I will proceed on the basis that some of the Holder's goods are self-evidently identical to those covered by the earlier trade mark. If the opposition fails even where the goods are identical, it follows that the opposition will also fail where the goods are only similar.

### **The average consumer and the nature of the purchasing act**

19. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).
20. 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 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.

21. I only have submissions regarding the average consumer from the Opponent, who submit that the contested goods are everyday consumer goods which have a relatively low purchase price and are bought by the public at large. Consequently, they submit that the degree of attention is going to be fairly low.

22. The average consumer of the goods in question will be the general public. They will be available through general retail outlets, such as supermarkets, and their online counterparts, as well as in food and drink venues such as cafés, restaurants, and bars. In physical stores, the goods will be displayed on shelves and selected by consumers themselves. A similar process applies online, where consumers will choose the goods after viewing images of them on a website. In food and drink establishments, selection is likely to be made verbally, but only after the consumer has visually inspected the goods, whether in display cabinets, on menus, or on boards positioned behind the counter. In my assessment, the selection process for the goods at issue will predominantly be visual, though I do not discount an aural element contributing to the process.
23. The Opponent argues that the selection process for the relevant goods will involve a low level of attention because they are relatively inexpensive. While I accept that the goods are low-cost and are frequently purchased, I do not agree that the consumer's level of attention will be low. Regardless of price, the goods in question are intended for consumption, and consumers are therefore likely to consider factors such as flavour, ingredients, and nutritional information. Consequently, I find that the goods will be chosen with a medium degree of attention.

### **Comparison of trade marks**

24. 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 the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgement 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”.

25. 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 trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

26. The trade marks to be compared are as follows:

The Opponent's mark	The Holder's mark
	

27. The Opponent argues that both parties' marks function essentially as word marks because any stylisation in its mark is minimal. It states that while the Holder's mark appears in lowercase black text and its mark appears in white uppercase letters on a simple teal banner, these visual differences are not distinctive enough to outweigh the strong similarity of the words themselves. Further the Opponent argues that both marks contain eight letters, begin with the identical element 'AQUA' and end with the letters 'RA,' therefore differing only in the two middle letters. As a result, the Opponent submits that the marks are visually highly similar overall.

28. The Opponent contends that the marks are aurally similar because they each have the same number of syllables and share both the identical beginning “AQUA” and ending “RA.” It is submitted that these shared elements dominate their pronunciation, and any small differences in the middle are minor by comparison.
29. Finally, the Opponent argues that the marks are conceptually similar because both contain the identical Latin word ‘AQUA’ and are followed by Latin-based terms (‘PURA’ and ‘SERA’) commonly used in southern European languages. The Opponent adds that the stylisation in its mark conveys no separate meaning and that consumers would focus on the shared ‘AQUA’ element and the fact that the marks share six of their eight letters. Therefore, the Opponent submits that the marks are conceptually similar to a high degree.
30. The Holder, on the other hand, submits that the marks are not similar, noting that the only shared element between them is the term ‘aqua’, which is entirely descriptive and non-distinctive in relation to the class 32 goods concerned, being a well-known term for ‘water’. The Holder further argues that the average consumer would not assume an economic connection between the two marks based solely on this element. Additionally, the Holder submits that the Opponent’s mark consists of two separate, stylised words in uppercase and includes a banner device, while its mark ‘aquasera’ is a single lowercase word without stylisation. Further, the endings ‘-PURA’ and ‘-SERA’ create noticeable visual and phonetic differences, and ‘PURA’ evokes an image of ‘pure’, as in clean and free of any other contaminants, whereas “aquasera” has no similar conceptual association. Overall, the Holder submits that the marks are visually, phonetically, and conceptually dissimilar.

### **Overall Impression**

31. The Opponent’s mark consists of the combination of the dictionary word ‘AQUA’ followed by the word ‘PURA’, presented on a blue banner, and written in a minimally stylised white typeface. As I will come to discuss further in my

conceptual comparison, I consider that the two words hang together to create a unitary phrase, and therefore neither word dominates so that it plays a greater role than the other. I also find that the word elements are the dominant and distinctive elements and that the decorative banner will be viewed as such and will have little impact on the overall impression of the mark.

32. The Holder's mark consists of the single word 'aquasera'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself.

### **Visual Comparison**

33. The Opponent's mark consists of two words, both being four letters in length, whereas the Holder's mark appears as one word, being eight letters in length. Whilst I note that the Opponent's mark is presented as two words, visually, it cannot be denied that both of the marks contain six of the same letters, in the same positions, that being 'AQUA\_\_RA', with the only difference being the small space between 'AQUA' and 'PURA', as well as the letters 'PU' in the middle of the Opponent's mark, and the letters 'se' in the middle of the Holder's mark. Additionally, the Opponent's mark is presented on a stylised blue banner device, and whilst of little significance to the overall impression of the mark, it does act as a visual point of difference between the marks. Bearing in mind my assessment of the overall impression of the marks, I consider there to be between a medium and high degree of visual similarity.

### **Aural Comparison**

34. Aurally, I agree with the Opponent that both marks contain the same amount of syllables (four), with three of them being pronounced identically. The word 'Aqua' will be articulated in accordance with its ordinary dictionary definition at the beginning of both marks. The word 'Pura' in the Opponent's mark will likely be articulated in the same way as the ordinary dictionary word 'Purer' would be, whereas I consider the 'sera' element of the Holder's mark will be pronounced as 'Seh-Ra'. Alternatively, some consumers may pronounce this element as

'See-Ra'. Whichever way the Holder's mark is articulated, and bearing mind the overall impression of the marks, I find there to be an above average degree of aural similarity.

### Conceptual Comparison

35. The conceptual nature will depend on how the consumer reads the mark. I refer to *Usinor SA v OHIM*, Case T-189/05, in which the GC found that:

"62. In the third place, as regards the conceptual comparison, it must be noted that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Lloyd Schuhfabrik Meyer*, paragraph 25), he will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him (Case T-356/02 *Vitakraft-Werke Wührmann v OHIM – Krafft (VITAKRAFT)* [2004] ECR II-3445, paragraph 51, and Case T-256/04 *Mundipharma v OHIM – Altana Pharma (RESPICUR)* [2007] ECR II-0000, paragraph 57)."

36. Although the conceptual comparison of the marks as a whole should be considered, the consumer will likely break a mark down into verbal elements which suggest a concrete meaning, or which resemble words known to them, as outlined above. Whilst I acknowledge the Holder's mark is presented as one word, being viewed as an invented word, or word in a foreign language, it is also my view that the majority of consumers would read the Holder's mark as 'Aqua' and 'sera'. They will understand 'Aqua' to be related to water, however, it is unlikely that they will attribute any meaning to 'sera'. Consequently, this element of the Holder's mark is conceptually neutral. I note the Opponent's submission and evidence where it states that the word 'AQUA' would be understood as a reference to the colour 'Aquamarine', or that it is only understood as 'water' in the highly specialised field of chemistry or pharmacology. However, I do not agree. Whilst I appreciate the Collins Dictionary definition relied upon by both parties states "*water: used in compound names of certain liquid substances (as in aqua regia) or solutions of*

*substances in water (as in aqua ammoniae), esp in the names of pharmacological solutions”* it is my view that the UK average consumer would understand the word ‘Aqua’ in the broadest sense of this definition i.e., a reference to water, especially when viewed in relation to the relevant goods concerned.

37. Similarly, the consumer will perceive the word ‘AQUA’ in the Opponent’s mark as relating to water, however, because of its close resemblance, including its pronunciation, the word ‘PURA’ will be seen by the average consumer as a reference to the word ‘Pure’ or ‘Purer’. Overall, the concept conveyed by the Opponent’s mark is a laudatory one alluding to the purity of the water i.e., pure water.
38. While I recognise that the Holder’s mark is presented as a single invented word, the two marks share the concept, albeit a relatively non-distinctive one, of referring to water. The endings, however, create a distinction in that ‘PURA’ carries a specific meaning within the Opponent’s mark, whereas ‘sera’ is conceptually neutral in the Holder’s mark. Taking these factors together, I conclude that the marks exhibit a low degree of conceptual similarity.

### **Distinctive character of the Opponent’s mark**

39. The Opponent submits that from the inherent perspective, the distinctive character of its mark is “normal”. The Opponent states that this is because the sign has no direct meaning for any of the goods concerned. Further, the Opponent submits that through its evidence it has demonstrated that, because of the use made of it, the level of distinctive character has been enhanced to high, resulting in substantial recognition amongst the relevant public.
40. 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).

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).”

41. 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. I will begin by considering the inherent distinctiveness of the Opponent's mark before proceeding to consider its plea of enhanced distinctive character.
42. The Opponent's mark consists of the words 'AQUA PURA' written in a minimally stylised white and presented on a blue banner device. It is considered these fairly banal stylistic elements do not add significantly to the distinctive character of the mark as a whole, which would instead stem from the words themselves. The word 'AQUA', as stated above, is a dictionary word that would be

understood as a reference to water, and whilst the word 'PURA' is not dictionary defined, it does resemble and evoke the dictionary words 'pure' or 'purer'. The mark as a whole, therefore, alludes to the freshness or purity of the goods concerned, especially those being water. Consequently, I find that the Opponent's mark possesses a low degree of inherent distinctive character for '*Mineral and aerated waters*', and between a low and medium degree of inherent distinctive character for the remaining goods that could contain water, those being '*Fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars, non-alcoholic; soda; aperitifs, non-alcoholic*'.

43. When considering whether the distinctive character of a mark has been enhanced, it is the perception of the UK consumer at the relevant date, that being UK designation date, that is key. I remind myself that in this instance, that date is 20 December 2023.
44. In his witness statement, Mr Clair states that the 'AQUA PURA' brand was established in 1991, and the site of Eden Valley, Cumbria has been bottling water at source, from the Penrith aquifer, since then. He goes on to explain that the Opponent acquired the company Princes Limited in 2020 which had been running the 'AQUA PURA' plant since 2004, thereby acquiring the rights to the mark.
45. Mr Claire also states that the Opponent has supplied high-quality bottled water in the UK under its brand for more than 30 years and currently holds a significant position in the market. Exhibit LC01 includes an article from the 'Guardian' stating "*Five companies account for 83% of bottled water sales in the UK, according to consultants Zenith Global.*" The Opponent, "*Roxane (owned by Sources Alma) has a 38% market share, Nestle 14%, Highland Spring 12% and Danone 10%. The fifth, Shepley Spring - ultimately owned by the US company Niagara Bottling LLC - has a 9% share of the UK market.*" This article is dated after the relevant period (25 November 2024) but does shed light on the significant market share held by the Opponent, which is likely to have still been the case prior to the relevant date. Additionally, it is not entirely

clear whether this market share concerns the 'AQUA PURA' brand only, or any other brands owned by the Opponent. However, exhibit LC01 also includes a screenshot of a website called 'www.prnewswire.co.uk', taken using the internet archive 'Wayback Machine', dated 18 March 2014 where it states *"Aqua Pura is the leading British brand of Natural Mineral Water and was launched through The Eden Valley Mineral Water Company (TEVMWCo) in 1991. Since its launch, Aqua-Pura has achieved the UK's leading British Natural Mineral Water brand status in the grocery market and now has an 8.2% share of the total bottled water market, second only to Evian (A.C Nielsen data Jan 25 1997)".* This further illustrates that the 'AQUA PURA' brand has maintained a strong share of the bottled water market for many years, with evidence suggesting its presence has continued to grow over time.

46. The witness statement includes the following breakdown of the volume of sales for the goods sold under the mark since the brand was acquired by the Opponent in 2020. The number of bottles sold is in the tens of millions per year since 2021, with the volume appearing to grow year on year, save for 2024, which is after the relevant date in any case. Additionally,

<b>AQUA PURA</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b> <b>(to November)</b>
<b>Volume (bottles)</b>	30,111,210	32,807,218	34,909,123	24,798,430

47. Mr Clair's witness statement confirms that the Opponent has made substantial sales and turnover under the mark and provides a breakdown of the approximate revenue for the UK for the period following the Opponent's acquisition of the brand. The figures presented below are mainly from before the relevant date, again save for 2024, but do demonstrate significant amounts, given the relatively low cost of the goods concerned, as well as showing a steady increase for the years before the relevant date. Further, invoices contained within exhibit LC03 demonstrate that these sales were made across the UK in major towns and cities such as London, Leicester, Preston, West Bromwich, Northampton to name a few.

### Sales figures

AQUA PURA	2021	2022	2023	2024 (to November)
Turnover (£)	£3,838,277.88	£4,568,591.91	£5,591,756.30	£4,706,280.14

48. The Opponent states that it has made substantial investments in expanding the distribution of its branded goods, moving beyond wholesalers and independent retailers to secure nationwide placements in major UK supermarkets, including Asda, Tesco, and Sainsbury's. Exhibit LC04 provides screenshots showing the goods available on these retailers' online platforms, as well as a list of Google results limited to show results between 1 January 2000 and 31 December 2023, showing that the goods were available for purchase from these retailers before the relevant date. Additionally, there are invoices showing the goods having been purchased by Asda, all dated before the relevant date.
49. The witness statement also refers to the marketing campaigns, strategies and investment by the Opponent for the 'AQUA PURA' brand. Exhibit LC05 includes an article from a website called 'Talking Retail' dated 02 August 2023, where it states *"Terri Cooper, marketing manager at Aqua Pura, commented: "At Aqua Pura, we've been going through an exciting period of change where we've began to reposition the brand to take families on an adventure. Our research has found that individuals with children in their households are twice as likely to buy bottled water in bulk than households without children. For this reason, our 2023 marketing campaign, which has received a £1m investment, has centred around family adventure and encouraging consumers nationwide to enjoy the great outdoors."* This exhibit also includes a number of invoices all dated before the relevant date from marketing companies 'Total Media', 'Refresh.' 'The Individual Agency', 'Shoot The Moon', 'Dunhumby' and 'North PR', demonstrating the Opponent's continued efforts and investment in promoting and marketing the brand. The Opponent's mark has also appeared in national newspapers and third-party publications, such as the 'Guardian F&D' (food & drink), and the 'Metro' website, as well as others. Examples of these are shown at exhibit LC 14 and are all dated prior to the relevant date. The

'Guardian F&D' article refers to 'AQUA PURA' as 'One of the UK's fastest growing British mineral water brands,' and the 'Metro' article refers to a 'new study from 'Aqua Pura'. These examples are accompanied by figures relating to the circulation, readership, and website visits of each publication/website, some in the millions, and whilst not indicative of how many people actually read the articles, it does demonstrate that the mark would have likely been exposed to a significant number of consumers. Considering all of this evidence, it appears that the Opponent has invested significantly in the promotion of the 'AQUA PURA' brand since acquiring the rights to it.

50. The witness statement also refers to the Opponent's further efforts to raise awareness of its activities by way of sponsorship of events and conferences across the UK. Mr Clair lists the following sponsorship deals, examples of which are provided at LC16 and LC17:

- |       |   |
|-------|---|
| 2018: | i. Betfred's Super League, the top level of the British rugby league system with an average attendance of 8,457 per match during the 2018 season (1,166,425 for the overall season). The matches were covered on Sky Sports on Prime Time (8pm) on Thursdays and Fridays. |
| 2021: | i. X Border Challenge 2021, a live running event where bottled water was provided to participants.<br><br>ii. Gelt Gladiators, a mass participation mud run event which counted to 4,000 contestants in 2021.   |
| 2022: | i. T2 Events, which organises events across Cumbria and Lancashire, e.g. Windermere One Way, Capernway Swim Series events, etc.   |
| 2023: | i. Cumbria Tourism Awards, for which the Opponent was official sponsor under the Mark.  |

2024: i. Un-Limited Motorsport (British Touring Car Championship), counting over 40,000 attendees at some of the events.<sup>2</sup>

Ongoing: i. Great Run Series (since at least 2016) as the Official Water Partner, with the Great North Run being the world's largest half marathon and the UK's biggest running event, with 60,000 entrants every year.

ii. Help for Heroes (since 2021), raising in excess of £30,000 between 2021-22 for the UK charity supporting veterans and their families, with a goal of raising at least a further £60,000 for the following two years.

iii. Carlisle United Football Club (since 2022), as the official shorts sponsor for the 2022/23 season and featuring as the official kit (including front of shirt) sponsor for the 2024/25 season.

iv. Lichfield festival (since 2023), counting a total audience of 20,200 visitors.

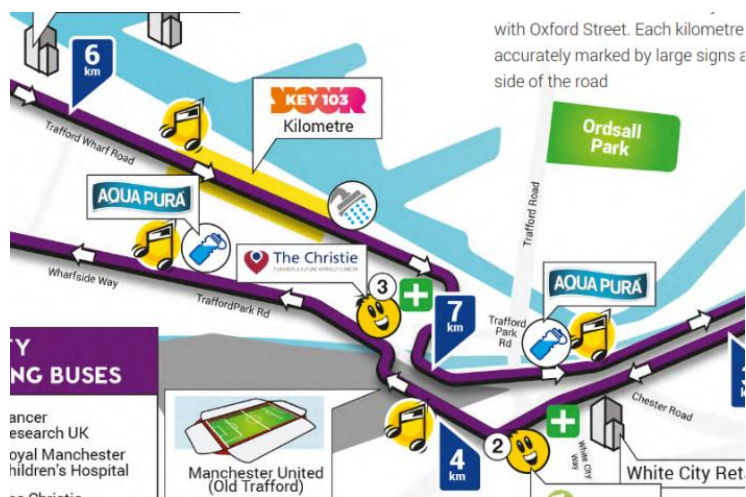
51. These exhibits show that the Opponent's goods, branded with the 'earlier mark', were provided to the participants of all of the running and swimming events that it was an official sponsor for as well as the Lichfield Festival. The number of samples sent for each event is shown below:

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<sup>2</sup> I note that this sponsorship deal is after the relevant date, however it does demonstrate the Opponent's continued efforts to promote its brand.

Event	Location	Date	Samples Sent (bottles)	Reach
Fradley 10km	Lichfield	4th July 2021	4,032	4,000
Lichfield Festival	Lichfield	8th - 18th July 2021	6,048	20,000
Sports Day	North Lakes School	9th July 2021	216	200
X Border 10km	Carlisle	11th July 2021	1,512	1,500
KMF Newcastle (Staffs) 10k	Newcastle (Staffs)	8th August	1,296	1,300
Penrith Tractor Run	Penrith	22nd August	216	500
Step up to the Plate	Hadrians Wall / Carlisle	11th September 2021	168	150
Lichfield 10km	Lichfield	12th September 2021	4,032	2,000
Gelt Gladiator	Carlisle	17th September 2021	5,016	5,000
Cathedral to Castle	Carlisle	26th September 2021	4032	2,000
<b>TOTAL</b>			<b>26,568</b>	<b>36,650</b>

52. Additionally, LC16 includes a copy of the 'Runners' Guide' for the 2016 Great Manchester Run where the Opponent's mark appears on the course route, as well as 'Aqua Pura' being listed as the official water brand of the event. It also features articles from 'Talking Retail' and 'Retail Times', both before the relevant date, detailing that 'Aqua Pura' have teamed up with GB Olympic Marathon runner AJ Bell as the official hydration partner of the AJ Bell Great Run Series. Further, it includes invoices for advertising boards, barrier covers, overhead lozenges, all being branded with the Opponent's mark.



## Aqua Pura teams up with the AJ Bell Great Run Series

by Fiona Briggs — March 15, 2023 Reading Time: 3 mins read

Aqua Pura, the Cumbrian based natural mineral water brand, has announced it will be the official hydration partner of the AJ Bell Great Run Series.

The new partnership, which is being announced during nutrition and hydration week, will help keep runners hydrated throughout races across the UK, including the series' flagship AJ Bell Great North Run. The AJ Bell Great North Run, which is taking place on the 10<sup>th</sup> September is the world's largest half marathon and the UK's biggest running event, with 60,000 entrants. What's more, the brand is also working with GB Olympic Marathon Runner, Stephanie Davis, to help educate the nation on the importance of hydration when running.



53. Although I have not set out all of the evidence at this stage, I have nevertheless taken it fully into account. The evidence clearly shows that the 'AQUA PURA' mark possessed a substantial share of the market and had been widely used throughout the UK for over thirty years prior to the relevant date. A notable portion of the company's turnover appears to have been invested in promoting the mark through advertising campaigns and sponsorship, and third-party materials indicate that 'AQUA PURA' was a well-known brand at the relevant time. The evidence shows that the mark has been used on bottled water. It is my view that, with consideration to the evidence as a whole, the distinctiveness of the earlier mark relied upon has been enhanced to a medium degree at the relevant date, with regard to the following goods:

Class 32: Mineral and aerated waters.

54. None of the evidence filed demonstrates any use of the sign in relation to the remaining goods. As a result, the Opponent's mark retains between a low and medium level of inherent distinctive character for the goods below:

Class 32: Fruit beverages and fruit juices; syrups and other preparations for making beverages; lemonades; fruit nectars, non-alcoholic; soda; aperitifs, non-alcoholic.

### **Likelihood of confusion**

55. 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 and services down to the responsible undertakings being the same or related.
56. 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.
57. Throughout the course of this decision, I have determined that:
  - The Opponent submitted that the goods are at least highly similar, if not identical, whereas the Holder admitted that the respective goods are similar but did not say to what degree. I have proceeded on the basis that some of the goods are identical and therefore if the opposition fails for these goods then it follows that it will also fail for goods which are only similar.

- The average consumers are members of the general public who will demonstrate a medium level of attention during the purchasing process.
- The purchasing process for the goods will be primarily visual in nature, though aural considerations have not been excluded.
- The level of distinctive character of the Opponent's mark has been enhanced to medium for 'Mineral and aerated waters.' The Opponent's mark possesses between a low and medium level of inherent distinctive character for the remaining goods.<sup>3</sup>
- The marks at issue are visually similar to between a medium and high degree. The marks are aurally similar to an above average degree. The marks are conceptually similar to a low degree.

58. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

"38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

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<sup>3</sup> Shown at paragraph 51.

59. I also take into account the decision *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch) in which the court confirmed that if the only similarity between the respective marks is a common element which has low distinctiveness, that points against there being a likelihood of confusion.
60. I also bear in mind that in *Nicoventures Holdings v The London Vape Company* [2017] EWHC 3393 (Ch), the High Court found that there was no likelihood of confusion between the following marks:



61. Birss J held that the common elements between the marks, being 'VAPE' and 'Co', were "low in distinctiveness either alone or in combination", and as the common elements were found to be descriptive and non-distinctive, it was necessary "to focus on the impact of this aspect on the likelihood of confusion". The Court found that:

"36. Bearing all this in mind but in particular having regard to the low degree of distinctiveness about the features these two marks have in common, even taking into account imperfect recollection **the differences in the two marks will take on a greater significance for the average consumer than they might otherwise.** Although the stylised aspects of each mark are not very remarkable, the fact remains that these aspects are entirely different. From the point of view of visual similarity, the likelihood of confusion is low. Considering conceptual similarity, the concept the two marks share is entirely down to their non-distinctive elements. It is the common concept which is nondistinctive. That does not lead to a likelihood of confusion. In some ways the respondent's best case could be thought to come from considering the aural similarity. From that point of view of course the visual stylised elements will not be present, and hearing "Vape dot co" or "THE Vape dot co" is not so far away from hearing "Vape and co" but the fact is again that they are not the same and what they share is entirely non-distinctive

when one bears in mind this is all in the context of electronic cigarettes.”

**(my emphasis)**

62. The Opponent's mark contains the words 'AQUA PURA' which evoke the concept of 'pure water'. I also bear in mind that the goods of both the Opponent, and the Holder are water, or goods that could contain water as an ingredient. I find that the common concept of relating to water conveyed by the parties' marks is low in distinctiveness as it alludes strongly to the goods concerned. Therefore, as the common element 'Aqua' is low in distinctiveness, *the differences between the two marks will take on a greater significance for the average consumer than they might have otherwise*. Consequently, whilst the stylisation of the Opponent's mark may not be very remarkable, it is clearly a visual point of difference. Moreover, the difference between the 'PU' and 'se' elements in the parties' marks also takes on a greater significance for the average consumer.
63. I note that the word 'PURA' is not present in the Holder's mark and despite some overlap created by the commonality of the word 'Aqua' in my view, this will be outweighed by the differences. This is especially the case as the letters 'PU' are visually quite different to 'se'. Consequently, it is unlikely that the competing marks will be mistaken or misremembered for one another. Rather, the aforementioned differences are likely to be sufficient to enable consumers to differentiate between them. In my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers paying a medium level of attention, to avoid mistaking the marks for one another, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to goods that are highly similar.
64. I turn now to consider a likelihood of indirect confusion. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein 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.).

(a) 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)”.

65. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, 16 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.
66. As highlighted above, Mr Purvis Q.C. in *L.A Sugar* sets out that there are three main categories of indirect confusion, and that indirect confusion ‘tends’ to fall in one of them.
67. Firstly, where the common element is so strikingly distinctive that the average consumer would assume that no-one else, but the brand owner, would be using it. In this instance, I do not consider that the ordinary dictionary word, ‘Aqua’, which has a recognisable meaning to the average consumer, is so strikingly distinctive that the average consumer would think that no-one else, but the Opponent would use it. As established above, it is considered that the word ‘Aqua’ is highly allusive in relation to the goods concerned and therefore is considered, in and of itself, lowly distinctive. In view of this, it is considered that the consumer would perceive the shared use of the well-known dictionary word ‘Aqua’, in relation to the goods concerned as coincidental and would not assume the marks were economically linked. The first category is therefore not satisfied.
68. This leads to the second category from *L.A Sugar*, where the later mark simply adds a non-distinctive element to the earlier mark. The examples provided by Mr Purvis Q.C. for this category are separate words which are frequently used to indicate that they are sub-categories/brands. However, the Holder’s mark is an invented word in its own right and the ‘sera’ element has no meaning in relation to the goods concerned. The differing element ‘sera’ is not a word which is frequently used to indicate sub-brands such as ‘LITE’ or ‘EXPRESS’. Consequently, the second category cannot be satisfied.

69. Finally, consumers, having recognised the differences between the marks, would not then assume that they are economically linked undertakings. I do not consider it logical that an undertaking would change two letters in the middle of its mark, such that it would alter the whole meaning: the use of the letters 'se' in place of 'PU' in this case.
70. Whilst I appreciate that the *L.A. Sugar* categories (referred to above) are not exhaustive, I do not see any other plausible basis on which to conclude that consumers would see the competing marks as deriving from economically linked undertakings. Consequently, and bearing in mind the comments of Arnold LJ and Mr Mellor Q.C (as he then was), I do not consider there to be a likelihood of indirect confusion.

## Conclusion

71. The opposition has failed in its entirety. Therefore, subject to any successful appeal, the designation may proceed to protection for all of the goods contained within the specification.

## Costs

72. As the Holder has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023.<sup>4</sup> In the circumstances, I award the Holder the sum of £850. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement	£250
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Preparing evidence and considering and	
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<sup>4</sup> As the proceedings were commenced after 01 February 2023

commenting on the other side's evidence      £600

Total      £850

73. I therefore order **Roxane UK Limited** to pay **İZZET TAVAŞI** the sum of £850. 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 27<sup>th</sup> day of February 2026**

**Oliver Rose'Meyer**  
**For the Registrar**