

O/0169/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4130887

BY

THE LIVIN WARRIOR ACADEMY LTD
TO REGISTER THE FOLLOWING TRADE MARK:

Warrior Livin

IN CLASS 18 AND 25

AND

IN THE MATTER OF FAST TRACK OPPOSITION

THERE TO UNDER NUMBER 600003679

BY MAIN MAN SUPPLIES LTD

BACKGROUND & PLEADINGS

1. On 29 November 2024, The Livin Warrior Academy Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the contested mark”). The contested mark was published for opposition purposes in the Trade Marks Journal on 21 February 2025 in respect of the following goods:

Class 18

Bags; Tote bags; Luggage bags; Duffel bags; Carry-on bags; Grocery tote bags; Bags for umbrellas; Luggage, bags, wallets and other carriers; Bags for travel; Garment bags; Shoulder bags; Makeup bags; Gym bags; Wash bags for carrying toiletries.

Class 25

Caps; Caps [headwear]; Baseball caps; Baseball caps and hats; Beanies; Hats; Baseball hats; Casual wear; Casual clothing; Casual shirts; Ladies wear; Sports wear; Exercise wear; Denims [clothing]; Jackets [clothing]; Athletic clothing; Hoodies; Sweatshirts; Hooded sweatshirts; T-shirts; Shirts; Long-sleeved shirts; Tracksuits; Sweat shirts; Sweaters; Cardigans; Yoga shirts; Sports shirts; Tank-tops.

2. On 7 May 2025, the application was partially opposed under the fast-track opposition scheme by Main Man Supplies Ltd (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. For the purpose of its opposition, the opponent relies upon the following word mark (“the earlier mark”), and the following goods for which its earlier mark is registered:

WARRIOR

Trade mark number: UK00914398077

Filing date: 22 July 2015

Registration date: 26 January 2020

Class 25: Clothing for use as work wear.

4. The opponent claims that the marks in issue are “similar to a very high degree”, and that the applicant’s class 25 goods are “identical” and the applicant’s class 18 goods are “similar to a high degree” to the opponent’s goods highlighted above. Consequently, the opponent submits that there exists a likelihood of confusion on the part of the public.
5. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant submits that the marks in issue “differ significantly in their visual structure, layout, and overall presentation”. The applicant also submits that the goods offered by the parties are “dissimilar, as their commercial offerings differ significantly in nature, intended purpose, method of use, and targeted consumers.” Consequently, the applicant submits that “no likelihood of confusion exists within the meaning of Section 5(2)(b) of the Act.”
6. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 2235 disappplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
8. The opponent is represented by Harrison IP Limited. The applicant is represented by Trama Legal s.r.o. In this case, neither party sought leave to file

evidence. No hearing was requested, and only the opponent filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Section 5(2)(b)

10. The opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“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”.

11. Section 5A of the Act stipulates that 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.”
12. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier

mark had not completed its registration process more than 5 years prior to the date of the application for registration of the contested mark, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon the full breadth of its specification.

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*,¹ *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (“Canon”),² *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*,³ *Marca Mode CV v Adidas AG & Adidas Benelux BV*,⁴ *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (“OHIM”),⁵ *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*,⁶ *Shaker di L. Laudato & C. Sas v OHIM*⁷ and *Bimbo SA v OHIM*⁸:

- 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 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 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

¹ Case C-251/95

² Case C-39/97

³ Case C-342/97

⁴ Case C425/98

⁵ Case C-3/03

⁶ Case C-120/04

⁷ Case C-334/05P

⁸ Case C-591/12P

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

Comparison of Goods

14. The competing goods are as follows:

The opponent's goods	The applicant's goods
<p><u>Class 25:</u> Clothing for use as work wear.</p>	<p><u>Class 18</u> Bags; Tote bags; Luggage bags; Duffel bags; Carry-on bags; Grocery tote bags; Bags for umbrellas; Luggage, bags, wallets and other carriers; Bags for travel; Garment bags; Shoulder bags; Makeup bags; Gym bags; Wash bags for carrying toiletries.</p> <p><u>Class 25</u> Caps; Caps [headwear]; Baseball caps; Baseball caps and hats; Beanies; Hats; Baseball hats; Casual wear; Casual clothing; Casual shirts; Ladies wear; Sports wear; Exercise wear; Denims [clothing]; Jackets [clothing]; Athletic clothing; Hoodies; Sweatshirts; Hooded sweatshirts; T-shirts; Shirts; Long-sleeved shirts; Tracksuits; Sweat shirts; Sweaters; Cardigans; Yoga shirts; Sports shirts; Tank-tops.</p>

15. As a preliminary point, it should be noted that section 60A of the Act provides that goods are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification⁹, or dissimilar on the ground that they appear in different classes under the Nice Classification.”
16. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “all the relevant factors relating to those goods or services themselves should be taken into account.

⁹ “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.

Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

17. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case¹⁰, for assessing similarity were:
 - a. The uses of the respective goods;
 - b. The users of the respective goods;
 - c. The physical nature of the goods;
 - d. The respective trade channels through which the goods reach the market;
 - e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
 - f. The extent to which the respective goods are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods in the same or different sectors.

18. As per the case of *Separode*,¹¹ I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

¹⁰ [1996] R.P.C. 281

¹¹ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

19. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*,¹² that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another or (vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

Class 18

Bags; Tote bags; [...] bags [...]; Shoulder bags.

20. The opponent submits that the applicant’s above referenced goods are similar to a high degree to its “clothing for use as work wear” on the basis that these goods are frequently sold through identical trade channels, and frequently emerge from the identical trade origin and brand identity to clothing.
21. By contrast, the applicant submits that its goods “cover an entirely different range of consumer products”, and that the applicant’s goods in class 18 are “fundamentally non-clothing items” which service an “entirely different purpose from work wear”, with the purpose of the applicant’s class 18 goods being to carry “personal belongings during travel, leisure, or daily activities.”
22. As a preliminary point, whilst I appreciate that the opponent’s clothing goods are “for use in work”, in light of these goods being classified in class 25, and for the reasons outline in further detail in paragraph 25 below, I consider the opponent’s goods to be ordinary clothing that can be worn to work. Whilst the parties’ submissions on the similarity, or lack thereof, of these compared goods are noted, I consider that all of the applicant’s above referenced goods could be

¹² Case T- 133/05

conceived by consumers as aesthetically complementary accessories to clothing. The respective goods are typically sold in the same outlets and consumers are likely to expect them to be produced by the same undertakings. There is also a general overlap in consumers between these goods, being members of the general public. As a result, I find that there is a low degree of similarity between the respective goods.

Luggage bags; Duffel bags; Carry-on bags; Grocery tote bags; Bags for umbrellas; Luggage, [...] wallets and other carriers; Bags for travel; Garment bags; Makeup bags; Gym bags; Wash bags for carrying toiletries.

23. It is my view that the position differs for the applicant's above referenced goods to those discussed at paragraphs 20 to 22 above. Although most of these goods are also bags, I do not consider that they would be sought by consumers to create a coordinated look with clothing for workwear. I am not satisfied that the respective goods can be said to reach the market through the same trade channels; even when sold in the same outlets, they are likely to be located in different sections. These goods differ in nature, method of use and purpose to the opponent's clothing for use as work wear. Given the differences in purpose and method of use, I can see no basis for finding that the average consumer would purchase the applicant's above referenced goods in the place of the opponent's goods. I can therefore see no basis for finding them to be competitive, nor do I consider them to be complementary given that they are neither important nor indispensable from one another.¹³ Whilst I do accept that there is a general overlap in user, being members of the general public, I do not consider this to be sufficient to reach a finding of similarity, and I am conscious of the judgment of Iain Purvis KC in *Unicorn Studio Inc v Veronese* in which he stipulated that "any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question" rather than by engaging "in a box-ticking exercise, asking how many of the

¹³ Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Case T-325/06

factors identified in *TREAT* or in *Canon* could be said to have been satisfied”.¹⁴
Consequently, I find that there is no similarity between the respective goods.

Class 25

Ladies wear; Jackets [clothing]; Shirts; Long-sleeved shirts; Cardigans.

24. The opponent submits that its term "clothing for use as work wear" is identical to all of the applicant's class 25 goods on the basis that the applicant's general terms in class 25 may be used or intended as work wear. However, the applicant submits that the goods in issue are "dissimilar, as their commercial offerings differ significantly in nature, intended purpose, methods of use, and targeted consumer". Specifically, in relation to the applicant's class 25 goods, the applicant submits that the opponent's goods are "inherently functional, designed to provide protection, durability, and compliance with workplace regulations or safety standards."
25. Having said that, the opponent correctly notes in its submissions that class 25 expressly excludes "certain clothing, footwear and headwear for special use, for example, protective helmets, including for sports, clothing for protection against fire, clothing especially for operating rooms, orthopaedic footwear, as well as clothing and footwear that are essential for the practice of certain sports". The type of specialised clothing described by the applicant is proper to class 9, rather than class 25. I do therefore agree that, whilst the opponent's goods are classified as "for use as work wear", by virtue of the goods' classification in class 25, this does not include specialist workwear or protective workwear. I therefore consider this to be ordinary clothing that can be worn to work, including stereotypical office attire. Accordingly, I do consider the opponent's "clothing for use as work wear" can include all of the applicant's above referenced clothing items, and that these goods are therefore identical in line with the principle established in *Meric*.

¹⁴ [2024] EWHC 1098 (Ch) - paragraph 24

Casual wear; Casual clothing; Casual shirts; Sports wear; Exercise wear; Denims [clothing]; Athletic clothing; Hoodies; Sweatshirts; Hooded sweatshirts; T-shirts; Tracksuits; Sweat shirts; Sweaters; Yoga shirts; Sports shirts; Tank-tops.

26. I note that the applicant's above referenced goods are ordinary clothing items. However, unlike the applicant's goods referenced in paragraphs 24 and 25 above, I consider the above referenced goods to be more casual in nature. I do not therefore find that they would fall within the term "clothing for use as work wear", or that they could be considered identical in line with the principle established in *Meric*.

27. I do, however, consider these goods to be highly similar. Whilst I do not consider the goods to be competitive or complementary on the basis that the opponent's goods are stipulated to be "for use at work" (for example, stereotypical office attire), and the applicant's above referenced goods are more casual items of clothing, I do consider there to be an overlap in purpose and method of use (i.e., to be worn on the body, and to adorn the body). I also consider there to be an overlap in user (being the general public), nature (given the overlap in general shape or materials used) and trade channels, given that the compared goods will all be purchased from clothing retailers.

Caps; Caps [headwear]; Baseball caps; Baseball caps and hats; Beanies; Hats; Baseball hats;

28. I compare the opponent's above referenced goods with the opponent's "clothing for use as work wear". I consider there to be an overlap in trade channels, given that all of the compared goods would be available to purchase from clothing retailers. I also note that the respective goods may be made from the same materials such as wool or cotton, and I therefore consider there to be some level of overlap in nature. There is also a general overlap in purpose as the compared goods are to be worn in order to protect or cover the body, and sometimes also as an adornment. Having said that, I do not consider there to be any basis for finding the goods to be complementary or competitive given that they are worn on different parts of your body, so you would not purchase the applicant's above

reference goods in place of the opponent's "clothing for use as work wear", nor do I consider the compared goods to be important or indispensable from one another. In my view, overall, I find these goods to be similar to a medium degree.

29. As some degree of similarity between the goods is required for a successful claim under section 5(2)(b) of the Act, the opposition must fail in respect of those goods in paragraph 23 that I have found to be dissimilar.¹⁵

Average consumer and the purchasing act

30. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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 and services in question (see *Lloyd Schuhfabrik Meyer*¹⁶).
31. 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*,¹⁷ Birss J. held:

"60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

¹⁵ *eSure Insurance v Direct Line Insurance* [2008] ETMR 77 CA

¹⁶ Case C-342/97

¹⁷ [2014] EWHC 439 (Ch)

32. The goods in issue are clothing, headwear and bags in class 18 and 25. The average consumer of the goods at issue is a member of the general public. Most of the goods in issue will be sold in retail outlets through self-selection or from their online equivalents. The purchasing process for all of the goods will therefore be dominated primarily by visual considerations, but I do not discount that aural considerations will also play a part as advice may be sought from sales assistants or through verbal recommendations.
33. Whilst I accept that the average consumer's level of attention will vary considerably depending on the cost and nature of the item at issue, the average consumer is likely to be conscious of factors such as the size, colour, material and price of the item concerned, all of which suggest that a medium level of attention would be paid by the average consumer during the purchasing process.

Comparison of marks

34. 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 *Bimbo SA v OHIM*,¹⁸ 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.”

¹⁸ Case C-591/12P

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

Earlier mark	Contested Mark
Warrior	Warrior Livin

37. The opponent submits that the marks in issue are visually, phonetically and conceptually highly similar. Specifically, the opponent submits that the word “Warrior” is the dominant and distinctive part of the contested mark. The opponent submits that the word “Livin” is a common and colloquial misspelling of “Living”. The Opponent therefore identifies “Livin” as a suffix to the word “Warrior” and submits that “customers may not remember” it, or, if they do, customers may abbreviate the contested mark to just “Warrior”.
38. The applicant submits that the “marks differ significantly in their visual structure, layout and overall presentation” as a result of the “additional distinctive element “Livin” following the word “Warrior”.

Overall Impression

39. The earlier mark is a word only mark. There are no other elements in the mark which contribute to its overall impression, so the overall impression lies in the word “warrior” itself.
40. The contested mark is also a word only mark, consisting of the words “Warrior Livin”. There are no other elements in the mark which contribute to its overall impression, so the overall impression lies in the words themselves. I do not agree that the word “Livin” can be identified as a “suffix” to the word “Warrior”. However, as is discussed in further detail in paragraph 45 below, I do consider the word

“Livin” to be allusive of the way in which the goods would be used (i.e., that they can be worn every day/as active wear, and that they are therefore more lifestyle based items of clothing). Consequently, I do consider the word “Warrior” to be the dominant element of the contested mark, but I do not agree that the “Livin” element of the mark would be misremembered or overlooked by the average consumer.

Visual Comparison

41. Visually, the marks overlap in their use of the word Warrior. This is the sole element of the earlier mark and the first word in the contested mark. The marks differ in the presence of the word “Livin” in the contested mark. In comparing these marks, I appreciate that consumers tend to focus on the beginnings of marks,¹⁹ being where the point of similarity lies. That being said, as outlined above, I do not consider that the word “Livin” will be overlooked. Overall, I consider the marks to be visually similar to a medium degree.

Aural Comparison

42. As noted above, the marks overlap in their use of the word Warrior. The contested mark also has the word “Livin”, which is not present in the earlier mark. I consider that all of the words in the marks will be pronounced in the ordinary way. Overall, I consider the marks to be aurally similar to a medium degree.

Conceptual Comparison

43. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.²⁰ The assessment must, therefore, be made from the point of view of the average consumer.

¹⁹ El Corte Inglés, SA v OHIM, Cases T-183/02 and T-184/02

²⁰ [2006] ECR I-643; [2006] E.T.M.R

44. As outlined above, both marks contain the word “Warrior”, which is a standard English dictionary word for a heroic, experienced or accomplished soldier or fighter, and I consider this to be the conceptual meaning that the average consumer would attribute to the earlier mark.
45. The contested mark consists of two words, being “Warrior Livin”. The meaning of warrior will be understood as above. As for “Livin”, I agree with the opponent that this will be understood by the average consumer as a misspelling of the word “living”, meaning to be alive/have life and, in the context of the contested mark, I consider the word “Livin” to be a reference to the fact that the goods can be worn everyday/as more lifestyle-based clothing (active wear).
46. In comparing the marks at issue, I find that the shared concept of the word “Warrior” will be considerable. However, the addition of the word “Livin” is a point of conceptual difference, as it has no counterpart in the earlier mark. Overall, I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

47. In *Lloyd Schuhfabrik Meyer* 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-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).”

48. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are “invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.
49. Whilst the distinctiveness of a mark may be enhanced as a result of it having been used in the market, in this instance the opponent has filed no evidence of use. Consequently, I have only the inherent position to consider.
50. I note that the applicant has submitted that the word “warrior” “is commonly used in clothing and fashion industries to evoke notions of strength, resilience, and an active or adventurous lifestyle”. In furtherance of this point, the applicant submits that “there are currently 178 registered trade marks in the UK that contain the term “warrior”, covering identical or similar goods in Classes 18 and 25”, and provides a website link to support its submission. Evidence that third parties use similar signs may reduce distinctiveness of a trade mark.²¹ However, I also note that in *Zero Industry Srl v OHIM*,²² the General Court stated that:

“73. [...] It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word ‘zero’ is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v*

²¹ See *Lifestyle Equities CV & Ors v Royal County of Berkshire Polo Club Ltd & Ors* [2024] EWCA Civ 814 and *Enterprise Holdings Inc v Europcar Group UK Ltd* [2015] EWHC 17 (Ch)

²² Case T-400/06

OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71). “

51. In any event, it would also be inappropriate for me to consider any of the information contained in the link for two reasons. Firstly, neither party sought leave to file evidence in these proceedings. Secondly, evidence containing references to website links are not acceptable in line with section 4.8.4 of the Manual of Trade Marks Practice. Accordingly, I have no admissible evidence before me to support the applicant’s submissions.
52. The earlier mark consists of the word “Warrior”, which is an ordinary dictionary word. As noted in paragraph 44 above, I consider that the word “Warrior” would be understood by the average UK consumer to be a name for a heroic, experienced or accomplished soldier or fighter. The word “warrior” is neither descriptive nor allusive of the opponent’s goods. Consequently, I consider it to have a medium level of inherent distinctive character.

Likelihood Of Confusion

53. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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.
54. 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 (see *Sabel*²³). 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 (see *Canon*²⁴). It is necessary for me to keep in mind the distinctive character of the

²³ C-251/95, para 22

²⁴ C-39/97, para 17

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.

55. Save for those identified in paragraph 23 above, I have found the parties' goods to be identical or similar to between a low and high degree. I have also found the marks to be visually, aurally and conceptually similar to a medium degree, and that the earlier mark has a medium level of inherent distinctive character.
56. I have identified that the average consumer of the goods would be members of the general public. I have also found that the average consumer will pay a medium degree of attention during the purchasing process, and that the purchasing process for all of the goods in issue would be primarily visual in nature, although I do not discount aural considerations.
57. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient visual, aural and conceptual differences between the marks to avoid them being mistakenly recalled as each other, particularly given that I have determined that at least a medium level of attention will be paid by the average consumer during the purchasing process. In the light of the above, I do not consider there to be a likelihood of direct confusion.
58. Accordingly, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of both marks (the word "Warrior") and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.

59. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:²⁵

“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 recognised 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.).

²⁵ BL O/375/10

(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).”

60. I am of the view that these marks would fall within the second or third category identified by Iain Purvis KC. It is my view that the average consumer would consider the addition of the word “Livin” at the end of the contested mark to be an addition of a non-distinctive element (giving that it is allusive of a characteristic of the goods, i.e., the way they are worn – as everyday items of clothing/active wear) and, therefore, to be entirely logical and consistent with a brand extension or a sub-brand of “Warrior”. This is particularly the case given that the opponent’s goods are limited to clothing for the purpose of work wear and the applicant’s goods include more casual and active clothing, i.e. more everyday/lifestyle-based items of clothing. As a consequence, I do therefore consider that there is a likelihood of indirect confusion between the goods in issue. For the avoidance of doubt, I consider this to be the case even in respect of the goods which I have only found to be similar to a low degree.
61. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,²⁶ 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*,²⁷ 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, 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.

CONCLUSION

62. For the reasons outlined above, the opposition succeeds in respect of all of the goods that I have found to be identical or similar. Therefore, the contested mark

²⁶ [2021] EWCA Civ 1207

²⁷ O/219/16

is, subject to any successful appeal of my decision, refused registration for the following:

Class 18

Bags; Tote bags; bags, Shoulder bags;

Class 25

Caps; Caps [headwear]; Baseball caps; Baseball caps and hats; Beanies; Hats; Baseball hats; Casual wear; Casual clothing; Casual shirts; Ladies wear; Sports wear; Exercise wear; Denims [clothing]; Jackets [clothing]; Athletic clothing; Hoodies; Sweatshirts; Hooded sweatshirts; T-shirts; Shirts; Long-sleeved shirts; Tracksuits; Sweat shirts; Sweaters; Cardigans; Yoga shirts; Sports shirts; Tank-tops.

63. That being said, the contested mark may proceed to registration (again, subject to any successful appeal of my decision) for the following goods, which I have found to be dissimilar:

Class 18

Luggage bags; Duffel bags; Carry-on bags; Grocery tote bags; Bags for umbrellas; Luggage, wallets and other carriers; Bags for travel; Garment bags; Makeup bags; Gym bags; Wash bags for carrying toiletries.

COSTS

64. As the opponent has achieved the greater degree of success overall it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023, albeit my award will have regard to the fact that the opponent did not achieve outright success in its oppositions. In the circumstances, I award the opponent the sum of £600 as a contribution towards the cost of the proceedings.²⁸ The sum is calculated as follows:

²⁸ These costs are in line with the scale adaptations for trade mark fast-track opposition proceedings.

Official fee:	£100
Preparing notice of opposition:	£200
Preparing submissions-in-lieu of a hearing:	£300
<u>Total:</u>	<u>£600</u>

65. I therefore order The Livin Warrior Academy Ltd to pay Main Man Supplies Ltd the sum of £600. The above 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 27th day of February 2026

B Hartland
For the Registrar