

O/0180/26

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 4049088
IN THE NAME OF BLUE AHEAD LTD
TO REGISTER AS A TRADE MARK**

VAVAMAN

IN CLASS 3

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 449313
BY SOCHO LTD**

BACKGROUND AND PLEADINGS

1. On 8 May 2024, VAVAMAN LTD applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published for opposition purposes on 24 May 2024, in respect of goods in class 3, as listed in the table under paragraph 15 of this decision.

2. The application is opposed by SOCHO LTD (“the opponent”). The opposition was filed on 27 August 2024 and is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application. The opponent relies upon the following mark:

VAVA Beauty

UK trade mark registration number 3905445

Filing date: 26 April 2023

Registration date: 29 September 2023

Registered in Classes 3, 18 and 21

Relying on all goods, as listed in the table under paragraph 15 of this decision.

3. The above mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that “VAVAMAN” incorporates the prominent “VAVA” element, which is central to the identity of its own “VAVA Beauty” brand, resulting in “significant consumer confusion”, which could mislead consumers as to the origin and affiliation of the products associated with the respective marks.

5. VAVAMAN LTD filed a counterstatement denying the claims.

6. On 2 December 2025, Form TM16 was filed requesting the transfer of ownership of UK00004049088 to BLUE AHEAD LTD, (who from this point forward will be

referred to as “the applicant”), with effect from the same date. Confirmation of the recordal of the assignment was issued on 4 December 2025.¹

7. Only the opponent filed evidence in chief. Neither party requested a hearing, and neither party elected to file written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

8. In these proceedings, neither party is professionally represented.

EVIDENCE

9. The opponent filed evidence in support of the opposition in the form of the witness statement of Richard Leigh dated 26 March 2025, which is accompanied by six exhibits, labelled Exhibit A to Exhibit F. Mr Leigh is the Chief Executive Officer of the opponent, a position he has held since 17 August 2022.

10. I have taken the evidence into account in reaching my decision and I will refer to it to the extent I consider necessary.

DECISION

11. 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.

¹ On 27 January 2026, the Tribunal wrote to request confirmation that the new owner of the earlier mark had had sight of the relevant forms or evidence filed, and that it stood by the statements made in the counterstatement. Confirmation that the new owner was aware of and accepted the liability for costs for the whole proceedings in the event that the opposition was successful was also requested. Such confirmation was received via the email in response sent on 28 January 2026.

Section 5(2)(b)

12. Section 5(2)(b) is relied on and reads as follows:

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

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

13. Section 5A states:

“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.”

14. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“OHIM”)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

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

Comparison of goods

15. The goods to be compared are:

Applicant's goods

Class 3

Beard oil; Hair oil; Shaving oil; Facial oil; Beard balm; Hair fixing oil; Hair oils; Shaving oils; Bath oil; Massage oil; Body oil; Aromatherapy oil; Cleansing oil; Facial oils; Body oil spray; Body oil [for cosmetic use]; Oils for hair conditioning; Moustache wax; Face oils; Mustache wax; Aftershave balm; Shaving balm; Shave balm; After-shave balms; Moisturizing body lotions; Moisturising skin creams [cosmetic]; Skin moisturizer; Scented body lotions and creams; After-sun lotions [for cosmetic use]; After-shave creams; Moisturising gels [cosmetic]; After-sun creams; Lip gloss; Skin cream; Scented body lotions; Lip protectors (Non-medicated -); Hydrating creams for cosmetic use; Skin cream [for cosmetic use]; Aftershave balms; Aftershave; Aftershave lotions; Aftershave moisturising cream; Aftershave creams; After-shave lotions; After-shave; After-shave gel; Aftershave gels; Hair balm; Shaving balms; Beauty balm creams; Shaving lotion; Aftershave emulsions; Aftershaves; Cologne; Pre-shave creams; After-sun lotions; Skin cleansing lotion; Skin lotion; Hair balms; Moisturiser; Moisturising creams, lotions and gels; Lip balms [non-medicated]; Moisturising skin lotions [cosmetic]; Deodorant soap; Soap (Deodorant -); Perfume; Aromatherapy lotions; Eau de cologne [cologne water]; Scented body creams; Perfume oils; Moisturising creams; Cologne water; Fragrance sachets; Colognes; Balms (Non-medicated -); Perfumed creams; Lotions for the skin; Suncare lotions; Exfoliant creams; Oils for perfumes and scents; Shave creams; Suntan lotions; Baby bottom balm; Scented soaps;

Moisturisers; Scented bathing salts; Body lotion; Soap; Detergent soap; Bath soap; Shower soap; Shaving soap; Soaps; Perfumed soap; Antiperspirant soap; Soap (Antiperspirant -); Liquid soap; Handmade soap; Bars of soap; Cosmetic soap; Bar soap; Skin soap; Waterless soap; Liquid soap for laundry; Soap products; Liquid bath soap; Loofah soaps; Soap sheets; Hand soap; Shaving soaps; Liquid bath soaps; Cream soaps; Perfumed soaps; Liquid soap used in foot bath; Cosmetic soaps; Liquid soap used in foot baths; Sponges impregnated with soaps; Facial soaps; Non-medicated soaps; Bath lotion; Shampoo; Soaps for body care; Shampoo bars; Foaming bath gels; Cleansing lotions; Antiperspirants; Deodorants and antiperspirants; Anti-perspirants; Anti-perspirant deodorants; Antiperspirants [toiletries]; Non-medicated antiperspirants; Body deodorants; Roll-on deodorants [toiletries]; Antiperspirants for personal use; Anti-perspirants in the form of sprays; Personal deodorants; Deodorants for personal use [perfumery]; Deodorants for body care; Sunscreen lotions; Moisturisers [cosmetics]; Anti-aging moisturizers used as cosmetics; Skin moisturizers used as cosmetics; Suncare lotions [for cosmetic use]; Deodorants for personal use; Dentifrices and mouthwashes; Moisturizers; Skin fresheners [cosmetics]; Shaving lotions; Body creams [cosmetics]; Mouthwashes; Bathing lotions; Body gels [cosmetics]; Body lotions; Fragrances; Perfumery and fragrances; Fragrance emitting wicks for room fragrance; Perfumes; Aromatics for fragrances; Scents; Fragrance preparations; Body fragrances; Household fragrances; Perfume water; Room fragrances; Air fragrance reed diffusers; Room perfume sprays; Liquid perfumes; Fragrance sachets for eye pillows; Fragrances for automobiles; Perfumery; Scented oils; Fragrance for household purposes; Natural oils for perfumes; Body deodorants [perfumery]; Perfume oils for the manufacture of cosmetic preparations; Perfumery products; Scented sachets; Fragrant sachets; Perfuming sachets; Perfumed sachets; Room perfumes in spray form; Scented linen sprays; Perfumes for cardboard; Solid perfumes; Refills for electric room fragrance dispensers; Scented body spray; Synthetic perfumery; Scented room sprays; Essential oils as fragrances for laundry use; Piperonal fragrancing compounds; Perfumery, essential oils; Perfumed powder [for cosmetic use]; Perfumes for ceramics; Aromatic oils for the bath; Perfumed oils for skin care; Fragrances for personal use; Perfumed powders [for cosmetic use]; Scented fabric refresher sprays; Perfumed powder;

Sachets for perfuming linen; Linen (Sachets for perfuming -); Room fragrancing products; Incense spray; Scented water; Aromatherapy oils; Creams (Cosmetic -); Cosmetic creams; Cosmetics and cosmetic preparations; Sunscreens [for cosmetic use]; Cosmetic moisturisers; Cosmetic facial lotions; Facial lotions [cosmetic]; Lotions for cosmetic purposes; Cosmetic masks; Cosmetic dyes; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic powder; Cosmetic oils; Cosmetic preparations; Anti-aging creams [for cosmetic use]; Facial cleansers [cosmetic]; Cosmetic kits; Anti-ageing creams [for cosmetic use]; Facial moisturisers [cosmetic]; Anti-wrinkle creams [for cosmetic use]; Cosmetic skin fresheners; Serums for cosmetic purposes; Skin cleansers [cosmetic]; Skin balms [cosmetic]; Cosmetic skin enhancers; Collagen for cosmetic purposes; Cleansing creams [cosmetic]; Cosmetic hair lotions; Facial scrubs [cosmetic]; Cosmetic rouges; Anti-wrinkle cream [for cosmetic use]; Anti-ageing serums for cosmetic purposes; Toning creams [cosmetic]; Facial packs [cosmetic]; Facial washes [cosmetic]; Skin care lotions [cosmetic]; Cosmetic massage creams; Geraniol for cosmetic purposes; Cosmetic suntan lotions; Cosmetic hand creams; Oils for cosmetic purposes; Skin hydrators for cosmetic purposes; Cosmetic products for the shower; Cosmetic eye gels; Exfoliating scrubs for cosmetic purposes; Cosmetic nourishing creams; Softening cleanser [cosmetic]; Facial lotion; Facial moisturizers; Facial cleansers; Facial lotions; Facial cream; Facial scrubs; Facial creams; Cosmetic facial masks; Facial masks [cosmetic]; Facial wash; Facial beauty masks; Facial butters; Facial concealer; Facial cream [for cosmetic use]; Body and facial oils; Body and facial butters; Facial serum for cosmetic use; Facial cleansing milk; Body and facial creams [cosmetics]; Body and facial gels [cosmetics]; Facial gels [cosmetics]; Facial cleansing grains; Facial conditioning preparations; Face and body masks; Skin masks; Cosmetic preparations for the hair and scalp; Make-up preparations for the face and body; Body mask cream; Face wash [cosmetic]; Exfoliating scrubs for the face; Hair care masks; Hair moisturizers; Hair lotion; Hair care creams [for cosmetic use]; Hair care lotions [for cosmetic use]; Skin toners [cosmetic]; Body scrubs [cosmetic]; Cosmetic body scrubs; Lotions for face and body care; Cosmetic creams for the skin; Skin creams [cosmetic]; Skin creams [for cosmetic use]; Face packs [cosmetic]; Hair cream; Clay skin masks; Hair serums; Hair tonics [for cosmetic use]; Face masks; Cleaning masks for the face; Hair

creams; Shaving cream; Shaving gel; Shaving creams; Shaving sets, comprised of shaving cream and aftershave; Shaving sprays; Shaving mousse; Shaving foam; Foam for use in shaving; Shaving gels; Foams for use in shaving; Shaving foams; Shaving preparations; Hair removal and shaving preparations; Shaving stones; Shaving sticks [preparations]; After shave lotions; Preparations for use after shaving; Hair grooming preparations; Pre-shave gels; Pre-shave foams; Shower cream; Lotions for beards; Hair lotions; Hair styling lotions; Shower creams; Hair gel; Hair styling gel; Hair wax; Creams for fixing hair; Pre-shave preparations; Hair shampoo; Hair styling spray; Hair styling waxes; Pastes for razor strops; Razor strops (Pastes for -); Hair moisturisers; Petroleum jelly for cosmetic purposes; Jelly (Petroleum -) for cosmetic purposes; Perfumed powders; Perfumed water; Scented linen water; Scented oils used to produce aromas when heated; Cushions impregnated with perfumed substances; Combing oil; Shower gel; Shave gel; Bath gel; Gel scrub; Soaps in gel form; Shower and bath gel; Bath and shower gel; Gel sprays being styling aids; Shower gels; Hair gels; Bath gels; Bath and shower gels; Bath gels (Non-medicated -); Hair styling gels; Styling gels for the hair; Gels for fixing hair; Body gels; Face gels; Bath and shower gels, not for medical purposes; Shower and bath foam; Bath and shower foam; Bath salts; Bath soaps; Bubble bath; Bath and shower preparations; Preparations for the bath and shower; Shower and bath preparations; Preparations for use in the bath or shower; Bath cream; Bath milk; Bath creams; Bath powder; Bath oils; Bath bombs; Foams for the bath; Bath foams; Cosmetic bath salts; Bath foam; Foam bath; Non-medicated bath salts; Bath crystals; Bath beads; Bath and shower oils [non-medicated]; Bath herbs; Baby bubble bath; Bath flakes; Bath preparations; Preparations for the bath; Cosmetic preparations for bath and shower; Bath pearls; Bubble bath preparations; Bubble bath [for cosmetic use]; Baby bath mousse; Bath lotions (Non-medicated -); Bath crystals (Non-medicated -); Bubble baths; Bath foams (Non-medicated -); Bath powder [cosmetics]; Bath oils (Non-medicated -); Non-medicated bath oils; Foam bath preparations; Bath creams (Non-medicated -); Foaming bath liquids; Non-medicated bubble bath preparations; Bubble bath preparations [for cosmetic use]; Bath powders (Non-medicated -); Non-medicated bath preparations; Bath preparations (Non-medicated -); Foams for use in the shower; Shower foams; Shower oils; Preparations for the shower; Refill packs for shower gel dispensers;

Scented wood; Perfumed potpourris; Scented pine cones; Scented toilet waters; Scented wax melts; Scented ceramic stones; Scented fabric refresher spray; Aromatic potpourris; Cushions filled with perfumed substances; Cushions impregnated with fragrant substances; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Perfumed body lotions [toilet preparations]; Perfumed toilet waters; Fragrance refills for non-electric room fragrance dispensers; Cushions filled with fragrant substances; Musk [perfumery]; Peppermint oil [perfumery]; Extracts of perfumes; Amber [perfume]; Pomanders [aromatic substances]; Cedarwood perfumery; Aromatics for perfumes; Feminine deodorant sprays; Moist wipes impregnated with a cosmetic lotion; Geraniol fragrancng compounds; Vanilla perfumery; Cologne impregnated disposable wipes; Skin moisturiser; Skin moisturisers; Skin hydrators; Oils for the skin; Skin conditioners; Skin cleansing foams; Oils for moisturising the skin after sunbathing; Skin balms (Non-medicated -); Lip balm; Lip balms; Lip conditioners; Face wash; Face scrub; Face creams; Facial washes; Hair and body wash; Hair shampoos; Hair pomades; Hair texturizers; Hair conditioner; Hair mousse; Hair rinses; Hair cosmetics; Hair mousses; Hair conditioners; Hair sprays; Shampoos for human hair; Hair colorants; Hair nourishers; Hair balsam; Non-medicated hair shampoos; Beard care preparations; Perfumeries; Essential oils for use in the manufacture of scented products; Eau de colognes.

Opponent's goods

Class 3

Makeup; Make-up; Facial makeup; Lip makeup; Nail makeup; Eye makeup; Natural makeup; Make-up remover; Skin make-up; Make-up primer; Organic makeup; Make-up removers; Make-up primers; Eye makeup remover; Powder for make-up; Powder (Make-up -); Make-up powder; Multifunctional makeup; Make-up pencils; Foundation make-up; Make-up foundation; Make-up for compacts; Make-up for the face; Eye make-up; Make-up foundations; Make-up palettes containing cosmetics; Chalk for make-up; Make-up removing lotions; Eyes make-up; Eye make-up removers; Make-up base; Make-up kits; Make-up preparations; Make-up removing creams; Eyelid doubling makeup; Makeup setting sprays; Make-up removing gels; Hair cosmetics; Make-up for the face and body; Facial concealer; Hair mascara; Skincare cosmetics; Make-up preparations for the face and body; Make-up

removing preparations; Hairstyling serums; Facial creams [cosmetics]; Facial gels [cosmetics]; Make-up removing milk; Make-up removing milks; Hairstyling masks; Skin masks [cosmetics]; Eyeliner; Cosmetics; Body and facial creams [cosmetics]; Lip cosmetics; Skin moisturizers used as cosmetics; Cosmetic hair lotions; Compacts containing make-up; Body and facial gels [cosmetics]; Mascara; Eye-shadow; Cosmetics for the use on the hair; Lip stains [cosmetics]; Cosmetics for eye-lashes; Eyeshadow; Nail primer [cosmetics]; Eyebrow cosmetics; Facial moisturisers [cosmetic]; Moisturisers [cosmetics]; Hair styling lotions; Facial cleansers [cosmetic]; Facial lotions [cosmetic]; Cosmetic facial lotions; Nail cosmetics; Lipstick; Colour cosmetics for the skin; Facial beauty masks; Nail paint [cosmetics]; Cosmetic facial masks; Facial masks [cosmetic]; Self-tanning preparations [cosmetics]; Eye cosmetics; Hair moisturizers; Cosmetic hair dressing preparations; Body creams [cosmetics]; Hair care lotions [for cosmetic use]; Eyeshadow palettes; Anti-aging moisturizers used as cosmetics; Nail polish removers [cosmetics]; Facial creams [for cosmetic use]; Facial creams [cosmetic]; Hair care creams [for cosmetic use]; Tanning gels [cosmetics]; Colour cosmetics; Facial wipes impregnated with cosmetics; Nail varnish remover [cosmetics]; Beauty preparations for the hair; Night creams [cosmetics]; Skin fresheners [cosmetics]; Skin cleansers [cosmetic]; Skin moisturizer masks; Beauty care cosmetics; Skin recovery creams [cosmetics]; Sunscreen [for cosmetic use].

Class 18

Makeup bags; Make-up bags; Make-up boxes; Make-up cases.

Class 21

Make-up brushes; Make-up sponges; Facial sponges for applying make-up; Eye make-up applicators; Makeup sponge holders; Applicator sticks for applying makeup; Applicators for applying eye make-up; Cosmetics brushes; Eyeliner brushes; Make-up removing appliances; Applicator sticks for applying make-up; Mascara brushes; Cosmetic brushes; Appliances for removing make-up, non-electric; Non-electric make-up removing appliances; Hair brushes; Hair for brushes; Cosmetics applicators; Applicators for cosmetics.

16. Where the goods in the specification of one party are included in a broader term from the other party's specification, those goods are considered to be identical: See *Gérard Meric v OHIM*, Case T-133/05 at [29].

17. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

"23. In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken into account. 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".

18. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

19. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

"82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking".

20. For the purposes of considering the issue of similarity of the goods and/or services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.²

² Paragraph 5

21. While making my comparison, I bear in mind the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch):

"12. ... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise. ... Nevertheless the principle should not be taken too far. ... Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

22. Pursuant to section 60A of the Act, the goods are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

23. In its counterstatement, the applicant submits that its VAVAMAN trade mark is explicitly tailored for men's grooming products, targeting a specific male audience, and that there is an "absence of overlapping channels of trade". Alongside the witness statement of Richard Leigh, the opponent adduces Exhibit A, which is intended to contradict the applicant's submissions by showing that the applicant's goods such as its beard oil are sold in the "Health & Beauty" category on eBay, which Mr Leigh submits is a common industry practice, as further exemplified in Exhibit B. Mr Leigh adds that this highlights the potential for consumer confusion in the shared online marketplace.³

24. While I note that some of the goods in class 3 for which the applicant seeks registration are likely to be focussed predominantly on a male audience, such as, for example, its *Beard oil*, many of the class 3 goods are not gender-specific. I will proceed to compare the goods at issue, grouping them collectively in as few groups as I consider logical, as per *Separode*, as follows:⁴

³ Point 3.1.2 of the witness statement.

⁴ I note that there is a repetition in terms throughout the applicant's class 3 specification.

The contested goods in Class 3

Hair oil; Hair fixing oil; Hair oils; Oils for hair conditioning; Hair balm; Hair balms; Cosmetic hair lotions; Cosmetic preparations for the hair and scalp; Hair care masks; Hair moisturizers; Hair lotion; Hair care creams [for cosmetic use]; Hair care lotions [for cosmetic use]; Hair cream; Hair serums; Hair tonics [for cosmetic use]; Hair creams; Hair grooming preparations; Hair lotions; Hair styling lotions; Gel sprays being styling aids; Hair gel; Hair styling gel; Hair wax; Creams for fixing hair; Hair shampoo; Hair styling spray; Hair styling waxes; Hair moisturisers; Hair gels; Hair styling gels; Styling gels for the hair; Gels for fixing hair; Hair ... wash; Hair shampoos; Hair pomades; Hair texturizers; Hair conditioner; Hair mousse; Hair rinses; Hair cosmetics; Hair mousses; Hair conditioners; Hair sprays; Shampoos for human hair; Hair colorants; Hair nourishers; Hair balsam; Non-medicated hair shampoos.

25. I consider the applicant's above goods are either self-evidently identical to, or would be encompassed by, the broad term "*Hair cosmetics*" as registered under class 3 in the earlier mark. The goods are therefore identical as per the principles outlined in *Meric*.

Suncare lotions; Suntan lotions; Sunscreen lotions; Suncare lotions [for cosmetic use]; Sunscreens [for cosmetic use]; Cosmetic suntan lotions.

26. The above goods are either self-evidently identical to the opponent's "*Sunscreen [for cosmetic use]*" in class 3, or would be encompassed by the broad term, rendering them identical as per *Meric*.

Beard oil; Shaving oil; Facial oil; Beard balm; Shaving oils; Bath oil; Massage oil; Body oil; Aromatherapy oil; Cleansing oil; Facial oils; Body oil spray; Body oil [for cosmetic use]; Moustache wax; Face oils; Mustache wax; Aftershave balm; Shaving balm; Shave balm; After-shave balms; Moisturizing body lotions; Moisturising skin creams [cosmetic]; Skin moisturizer; Scented body lotions and creams; After-sun lotions [for cosmetic use]; After-shave creams; Moisturising gels [cosmetic]; After-sun creams; Lip gloss; Skin cream; Scented body lotions; Lip protectors (Non-medicated -); Hydrating

creams for cosmetic use; Skin cream [for cosmetic use]; Aftershave balms; Aftershave moisturising cream; Aftershave creams; After-shave gel; Aftershave gels; Shaving balms; Beauty balm creams; Shaving lotion; Aftershave emulsions; Pre-shave creams; After-sun lotions; Skin cleansing lotion; Skin lotion; Moisturiser; Moisturising creams, lotions and gels; Lip balms [non-medicated]; Moisturising skin lotions [cosmetic]; Deodorant soap; Soap (Deodorant -); Aromatherapy lotions; Scented body creams; Moisturising creams; Balms (Non-medicated -); Perfumed creams; Lotions for the skin; Exfoliant creams; Shave creams; Baby bottom balm; Scented soaps; Moisturisers; Scented bathing salts; Body lotion; Soap; Detergent soap; Bath soap; Shower soap; Shaving soap; Soaps; Perfumed soap; Antiperspirant soap; Soap (Antiperspirant -); Liquid soap; Handmade soap; Bars of soap; Cosmetic soap; Bar soap; Skin soap; Waterless soap; Soap products; Liquid bath soap; Loofah soaps; Soap sheets; Hand soap; Shaving soaps; Liquid bath soaps; Cream soaps; Perfumed soaps; Liquid soap used in foot bath; Cosmetic soaps; Liquid soap used in foot baths; Sponges impregnated with soaps; Facial soaps; Non-medicated soaps; Bath lotion; Shampoo; Soaps for body care; Shampoo bars; Foaming bath gels; Cleansing lotions; Antiperspirants; Deodorants and antiperspirants; Anti-perspirants; Anti-perspirant deodorants; Antiperspirants [toiletries]; Non-medicated antiperspirants; Body deodorants; Roll-on deodorants [toiletries]; Antiperspirants for personal use; Anti-perspirants in the form of sprays; Personal deodorants; Deodorants for personal use [perfumery]; Deodorants for body care; Moisturisers [cosmetics]; Anti-aging moisturizers used as cosmetics; Skin moisturizers used as cosmetics; Deodorants for personal use; Moisturizers; Skin fresheners [cosmetics]; Shaving lotions; Body creams [cosmetics]; Bathing lotions; Body gels [cosmetics]; Body lotions; Scented oils; Body deodorants [perfumery]; essential oils; Scented body spray; ...essential oils; Perfumed powder [for cosmetic use]; Aromatic oils for the bath; Perfumed oils for skin care; Perfumed powders [for cosmetic use]; Perfumed powder; Aromatherapy oils; Creams (Cosmetic -); Cosmetic creams; Cosmetics and cosmetic preparations; Cosmetic moisturisers; Cosmetic facial lotions; Facial lotions [cosmetic]; Lotions for cosmetic purposes; Cosmetic masks; Cosmetic dyes; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic powder; Cosmetic oils; Cosmetic preparations; Anti-aging creams [for cosmetic use]; Facial cleansers [cosmetic]; Cosmetic kits; Anti-ageing creams [for cosmetic use]; Facial moisturisers [cosmetic]; Anti-wrinkle creams [for cosmetic use]; Cosmetic skin fresheners; Serums for cosmetic purposes; Skin

cleansers [cosmetic]; Skin balms [cosmetic]; Cosmetic skin enhancers; Collagen for cosmetic purposes; Cleansing creams [cosmetic]; Facial scrubs [cosmetic]; Cosmetic rouges; Anti-wrinkle cream [for cosmetic use]; Anti-ageing serums for cosmetic purposes; Toning creams [cosmetic]; Facial packs [cosmetic]; Facial washes [cosmetic]; Skin care lotions [cosmetic]; Cosmetic massage creams; Geraniol for cosmetic purposes; Cosmetic hand creams; Oils for cosmetic purposes; Skin hydrators for cosmetic purposes; Cosmetic products for the shower; Cosmetic eye gels; Exfoliating scrubs for cosmetic purposes; Cosmetic nourishing creams; Softening cleanser [cosmetic]; Facial lotion; Facial moisturizers; Facial cleansers; Facial lotions; Facial cream; Facial scrubs; Facial creams; Cosmetic facial masks; Facial masks [cosmetic]; Facial wash; Facial beauty masks; Facial butters; Facial concealer; Facial cream [for cosmetic use]; Body and facial oils; Body and facial butters; Facial serum for cosmetic use; Facial cleansing milk; Body and facial creams [cosmetics]; Body and facial gels [cosmetics]; Facial gels [cosmetics]; Facial cleansing grains; Facial conditioning preparations; Face and body masks; Skin masks; Make-up preparations for the face and body; Body mask cream; Face wash [cosmetic]; Exfoliating scrubs for the face; Skin toners [cosmetic]; Body scrubs [cosmetic]; Cosmetic body scrubs; Lotions for face and body care; Cosmetic creams for the skin; Skin creams [cosmetic]; Skin creams [for cosmetic use]; Face packs [cosmetic]; Clay skin masks; Face masks; Cleaning masks for the face; Shaving cream; Shaving gel; Shaving creams; Shaving sets, comprised of shaving cream and aftershave; Shaving sprays; Shaving mousse; Shaving foam; Foam for use in shaving; Shaving gels; Foams for use in shaving; Shaving foams; Shaving preparations; Hair removal and shaving preparations; Shaving stones; Shaving sticks [preparations]; After shave lotions; Preparations for use after shaving; Pre-shave gels; Pre-shave foams; Shower cream; Lotions for beards; Shower creams; Pre-shave preparations; Pastes for razor strops; Razor strops (Pastes for -); Petroleum jelly for cosmetic purposes; Jelly (Petroleum -) for cosmetic purposes; Perfumed powders; Combing oil; Shower gel; Shave gel; Bath gel; Gel scrub; Soaps in gel form; Shower and bath gel; Bath and shower gel; Shower gels; Bath gels; Bath and shower gels; Bath gels (Non-medicated -); Body gels; Face gels; Bath and shower gels, not for medical purposes; Shower and bath foam; Bath and shower foam; Bath salts; Bath soaps; Bubble bath; Bath and shower preparations; Preparations for the bath and shower; Shower and bath preparations; Preparations for use in the bath or shower; Bath cream; Bath milk; Bath

creams; Bath powder; Bath oils; Bath bombs; Foams for the bath; Bath foams; Cosmetic bath salts; Bath foam; Foam bath; Non-medicated bath salts; Bath crystals; Bath beads; Bath and shower oils [non-medicated]; Bath herbs; Baby bubble bath; Bath flakes; Bath preparations; Preparations for the bath; Cosmetic preparations for bath and shower; Bath pearls; Bubble bath preparations; Bubble bath [for cosmetic use]; Baby bath mousse; Bath lotions (Non-medicated -); Bath crystals (Non-medicated -); Bubble baths; Bath foams (Non-medicated -); Bath powder [cosmetics]; Bath oils (Non-medicated -); Non-medicated bath oils; Foam bath preparations; Bath creams (Non-medicated -); Foaming bath liquids; Non-medicated bubble bath preparations; Bubble bath preparations [for cosmetic use]; Bath powders (Non-medicated -); Non-medicated bath preparations; Bath preparations (Non-medicated -); Foams for use in the shower; Shower foams; Shower oils; Preparations for the shower; Refill packs for shower gel dispensers; Perfumed body lotions [toilet preparations]; Feminine deodorant sprays; Moist wipes impregnated with a cosmetic lotion; Cologne impregnated disposable wipes; Skin moisturiser; Skin moisturisers; Skin hydrators; Oils for the skin; Skin conditioners; Skin cleansing foams; Oils for moisturising the skin after sunbathing; Skin balms (Non-medicated -); Lip balm; Lip balms; Lip conditioners; Face wash; Face scrub; Face creams; Facial washes; ... body wash; Beard care preparations; Essential oils for use in the manufacture of scented products.

27. In my view, the average consumer would construe the term “cosmetics” as being beauty preparations or make-up and would include the likes of face and body creams, lotions and oils, as well as soap and washes, which may be applied directly to the skin, or added to the likes of bath water. All of these products may be used to cleanse, protect, hydrate or enhance the appearance of the face and/or body, or for general well-being, such as the massage and aromatherapy oils. I consider that all of the applicant’s above goods (some of which are already qualified as being cosmetic/s), to be self-evidently identical to, or would be encompassed by the opponent’s broad term “cosmetics” and as such the goods are identical as per *Meric*. I find this regardless of whether the goods are targeted towards either male or female users. If I have given too much weight as to what would be encompassed by the broad term “cosmetics”, then in the alternative I consider there to be an overlap in users, as well as in the nature and purpose of the goods at hand (being to cleanse, protect, hydrate

or enhance) and the method of use (being applied directly to the face or body, or added to bathing water). The goods will share channels of trade, such as supermarkets, drugstores and their online equivalents, and in my view the average consumer could realistically perceive them as emanating from the same undertaking. The goods are highly similar.

Aftershave; Aftershave lotions; After-shave lotions; After-shave; Aftershaves; Cologne; Perfume; Eau de cologne [cologne water]; Perfume oils; Cologne water; Colognes; Oils for perfumes and scents; Fragrances; Perfumery and fragrances; Perfumes; Aromatics for fragrances; Scents; Fragrance preparations; Body fragrances; Perfume water; Liquid perfumes; Perfumery; Natural oils for perfumes; Perfume oils for the manufacture of cosmetic preparations; Perfumery products; Solid perfumes; Synthetic perfumery; Perfumery ...; Fragrances for personal use; Scented water; Perfumed water; Scented toilet waters; Extracts of flowers [perfumes]; Flowers (Extracts of -) [perfumes]; Extracts of flowers being perfumes; Perfumed toilet waters; Musk [perfumery]; Peppermint oil [perfumery]; Extracts of perfumes; Amber [perfume]; Cedarwood perfumery; Aromatics for perfumes; Geraniol fragrancng compounds; Vanilla perfumery; Perfumeries; Eau de colognes.

28. While the applicant's various *Aftershave* and *Perfumery and fragrance* products listed above are different in their essential nature to the applicant's various cosmetics and hair preparations, there will be an overlap in users. Although they have not been qualified as such, I would expect many of the opponent's goods to be fragranced and as such there will be an overlap in purpose as they will also perform the additional function of fragrancing the body or hair, although the primary function of many of the goods will be to moisturise or cleanse. It is not uncommon for the manufacturers of perfumes to bring out a complimentary range of face and body creams or bath and shower products which include the same fragrance as the perfume itself. It would therefore not be unreasonable for the average consumer to mistakenly assume that the competing goods derive from the same undertaking. I therefore consider the applicant's goods to be similar to a medium degree to the broad terms "cosmetics" and "*Hair cosmetics*" of the earlier mark.

Dentifrices and mouthwashes; Mouthwashes.

29. To my mind, while there will be an overlap in users and channels of trade with the parties' respective goods, the applicant's *Dentifrices and mouthwashes; Mouthwashes* are intended specifically for use in oral hygiene, which is not the same purpose as any of the opponent's goods. The opponent has not provided any supporting evidence to show that these particular goods would be manufactured by the same undertakings as for the opponent's goods. In *RALEIGH INTERNATIONAL Trade Mark* [2001] RPC 11, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, observed that when the goods are not identical or self-evidently similar, the opposition should be supported by evidence as to their similarity.⁵ I see nothing within the opposing specifications which immediately strikes me as being self-evidently similar, the respective goods are neither complimentary nor in competition, and given the difference in their fundamental nature and purpose, I consider it unlikely that the consumer of the goods at issue would mistakenly believe that they had been provided by the same or economically linked undertakings. Therefore, I find the goods to be dissimilar. If I am wrong in this assessment, then I consider that the goods are similar, at best, to only a low degree.

Fragrance sachets; Liquid soap for laundry; Fragrance emitting wicks for room fragrance; Household fragrances; Room fragrances; Air fragrance reed diffusers; Room perfume sprays; Fragrance sachets for eye pillows; Fragrances for automobiles; Fragrance for household purposes; Scented sachets; Fragrant sachets; Perfuming sachets; Perfumed sachets; Room perfumes in spray form; Scented linen sprays; Perfumes for cardboard; Refills for electric room fragrance dispensers; Scented room sprays; Essential oils as fragrances for laundry use; Piperonal fragranting compounds; Perfumes for ceramics; Scented fabric refresher sprays; Sachets for perfuming linen; Linen (Sachets for perfuming -); Room fragranting products; Incense spray; Scented linen water; Scented oils used to produce aromas when heated; Cushions impregnated with perfumed substances; Scented wood; Perfumed potpourris; Scented pine cones; Scented wax melts; Scented ceramic stones; Scented fabric refresher spray; Aromatic potpourris; Cushions filled with perfumed substances; Cushions impregnated with fragrant substances; Fragrance refills for non-electric

⁵ Paragraph 20

room fragrance dispensers; Cushions filled with fragrant substances; Pomanders [aromatic substances].

30. All of the opponent's goods in class 3 are cosmetic in nature and are intended to be used on the face, body or hair. The applicant's above-listed goods are clearly not intended for cosmetic use, but rather are for household use, such as in the fragrancing of the likes of rooms, laundry, fabrics etc. I consider the competing goods to be different in their fundamental nature and method of use. The goods are neither complementary nor are they in competition. While there may, at a superficial level, be an overlap in users, with both sets of goods being used by the general public, and there will be an overlap in trade channels inasmuch that both sets of goods may be purchased through general retail stores and their online equivalents, this in itself is insufficient for a finding of similarity between the goods. I consider it unlikely that the consumer of the respective goods would mistakenly believe that the goods had been provided by the same or economically linked undertakings. Neither can I find any obvious similarity between the goods and the opponent's goods in classes 18 and 25. In *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity requires the exercise of common sense.⁶ Accordingly, taking a realistic approach to the comparison of these particular goods, and without evidence to the contrary, I find them to be dissimilar.

31. Under section 5(2)(b), a degree of similarity between the goods is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA. In relation to the goods which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b), I will take no further account of such goods, with the opposition failing to that extent.

The average consumer and the nature of the purchasing act

32. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purpose of assessing the

⁶ At [24].

likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97, at [26].

33. In my view, the average consumer of the overlapping goods will be the general public, although I also consider that the average consumer of the overlapping haircare and cosmetic products could be a professional such as a hairdresser or a beautician. The goods are sold through a range of retail or wholesale outlets where the goods will be displayed on shelves, being viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods having viewed an image displayed on a web page. Visual considerations will dominate the process, although in physical stores, I do not discount the aural element as the consumer may seek advice from sales staff. Although the price of the goods can vary, on balance it seems to me that the cost of the purchase is likely to be relatively low and the goods will be purchased reasonably frequently. The consumer will want to ensure that the products and their ingredients are suitable for them and meet their specific personal needs. Overall, I consider the level of attention paid by the general public during the selection of the goods will be medium, although it is likely to be slightly higher for the most expensive perfumery products. Meanwhile, the professional consumer, whose own reputation will be paramount, is likely to pay a higher than average degree of attention to the selection process of the goods.

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 in *Bimbo SA v OHIM* Case C-591/12P, that:

“34.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.”

35. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

36. The applicant’s mark consists of the single word “**VAVAMAN**”, presented in capital letters in a standard black typeface. As the mark contains no other elements, the overall impression therefore rests in the word itself.

37. The opponent’s mark comprises two words, “**VAVA Beauty**”, with the first word “**VAVA**” being presented in capital letters, while the second word, “**Beauty**” is in title case, the whole mark being presented in a standard black typeface. To my mind, the average consumer will recognise that the word “Beauty” is non-distinctive for the opponent’s goods, being a variety of beauty products and related accessories. The word “Beauty” will not be overlooked, however, given its stronger presentation within the mark as a whole, it is the word “VAVA” which dominates and to which the eye is drawn, playing the greater role in the overall impression, with the word “Beauty” making a lesser contribution.

38. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, however, I accept that this is not always the case.

39. Visually, the single word which makes up the applicant’s mark versus the two words which make up the opponent’s mark gives rise to a visual disparity between them. However, taking into account the position of the identical “VAVA” element at the beginning of each of the marks, overall I consider the marks to be visually similar to a medium degree.

40. Aurally, the applicant's mark would be articulated as three syllables, VA-VA-MAN, while the opponent's mark would be voiced as four syllables "VA-VA-BEW-TEE", meaning aural commonality between the first two syllables of the competing marks. Overall, I consider the marks to be aurally similar to a medium degree.

41. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006]⁷.

42. To my knowledge, the "VAVA" element present in each of the competing marks has no defined meaning in British English, and is likely to be perceived by a significant proportion of the average UK consumer as an invented word with no conceptual meaning. Although the applicant's mark consists of the single word "VAVAMAN", I note that in *Usinor SA v OHIM*, Case T-189/05, the GC found that:

"62. ... 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)." **(My emphasis)**

43. With this in mind, I consider that a significant proportion of consumers are likely to break down the applicant's mark into two distinct elements, being the invented word "VAVA" and the common dictionary-defined word "MAN". The applicant seems to endorse this presumption as, at point 2.c) of its counterstatement, it states that "VAVAMAN communicates a clear association with male grooming as the suffix "MAN" signals a gender-specific market".⁸

⁷ Paragraph 56.

⁸ I acknowledge that case law indicates that assessment of the conceptual similarity of the marks is usually done without reference to the goods in question: *Viñedos Emiliana SA v Consorzio Tutela Vini Emilia*, (2) *Chiarli 1860 – Pr.I.V.I Srl And* (3) *Medici Ermete E Figli Srl* BL O/054/22.

44. To my mind, the words “VAVA” and “MAN” do not naturally fit together. Regardless that the two components are conjoined, I consider that to a significant proportion of consumers, the “VAVA” element of the applicant’s mark will be perceived as having an independent, distinctive significance: see *Whyte and Mackay Ltd v Origin Wine UK Ltd*,⁹ where Arnold J. (as he was then) considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson* in relation to such composite marks.

45. The “Beauty” element of the opponent’s mark is a well-known word which will be attributed its natural meaning. Although the dictionary-defined “MAN” element of the applicant’s mark would have an easily recognisable concept when viewed in isolation, as already mentioned, it is my view that the distinctive element “VAVA” which is common to both marks will most likely be seen by a significant proportion of the average consumer as a wholly invented word with no such recognisable meaning. As such, although the additional elements of each mark, being “MAN” and “Beauty” respectively, will be perceived at face value, leading to a degree of conceptual disparity between the marks as a whole, the overlapping distinctive element “VAVA” is conceptually neutral.

Distinctive character of the earlier mark

46. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

“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

⁹ *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

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).”

47. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its mark has enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

48. I note that it is the distinctiveness of the common element that is important here: *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, at [39]. In its counterstatement, the applicant submits that the term “VAVA” “lacks inherent distinctiveness”.¹⁰ I disagree. As already mentioned in paragraph 45 of this decision, I consider the word “VAVA” will be perceived as an invented word with no recognisable meaning. It neither describes, nor is allusive of the goods for which the mark is registered. As such, I consider the word “VAVA” to enjoy a high degree of inherent distinctive character. While the word “Beauty” is descriptive of the type of goods as being beauty-related products, due to the dominant “VAVA” element, I consider the mark as a whole to be inherently distinctive to a medium to high degree.

Likelihood of confusion

49. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater

¹⁰ At point 4. a).

degree of similarity between the respective goods and services and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

50. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

“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.).

(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).”

51. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

52. Earlier in this decision, I found that:

- The contested goods range between identical to dissimilar to the opponent’s goods;
- The level of attention of the general public as the average consumer will be medium/slightly higher than medium when selecting the goods, while the professional consumer is likely to pay a higher than average degree of attention to the selection process;
- Both groups, whilst not ignoring aural considerations, will select the goods at issue by predominantly visual means;
- The competing trade marks are visually and aurally similar to a medium degree, and while there is a degree of conceptual disparity between the marks as a whole, the overlapping distinctive element “VAVA” is conceptually neutral.
- The earlier mark as a whole is inherently distinctive to a medium to high degree, with the common element “VAVA” enjoying a high degree of inherent distinctive character.

53. Although the average consumer views the mark as a whole, case law also directs me to bear in mind the dominant and distinctive elements of the marks. While allowing that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind, I consider it unlikely that they would mistake one mark for the other. I acknowledge the medium degree of visual and aural similarity between the marks, and that it is the “VAVA” element in each of the marks which plays a dominant and distinctive role. However, it is my view that the average consumer, being reasonably well informed and reasonably circumspect, paying a medium degree of attention (as a minimum) to the selection of the goods at issue, will notice and recall the differences between the marks. I find this particularly given that in the applicant’s mark, the word is presented as a single word “VAVAMAN”, while the earlier mark is presented as two distinct words “VAVA Beauty”. Consequently, whilst I acknowledge the allusive/descriptive qualities attached to the “MAN” element of the applicant’s single word mark, I do not consider there to be a likelihood of direct confusion between the marks.

54. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

55. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold 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”. Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

56. I note the opponent's submissions in its statement of grounds that there is a "risk that consumers will mistakenly perceive "VAVAMAN" as a male-oriented extension or sub-brand of "VAVA Beauty." Meanwhile, the applicant submits that the applied for mark "does not pose any likelihood of confusion because "the target markets, consumers, and channels of trade are sufficiently different", that "coexistence of similar marks is common",¹¹ and that "the opponent has provided no evidence of actual confusion". However, absence of evidence of confusion does not necessarily mean an absence of actual confusion: *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, at [80].

57. I keep in mind the global assessment of the competing factors in my decision, and the principle of interdependency between them. I take into account the identity or degree of similarity of the goods, and the high degree of inherent distinctive character of the "VAVA" element which is common to both marks. For the reasons already outlined within this decision, I disagree with the applicant's submissions that "the presence of "MAN" in VAVAMAN functions as a highly distinctive ... element, differentiating it from VAVA Beauty".¹² It is my view that it would not be unreasonable for the average consumer to perceive the conjoining of the word "VAVA" and "MAN" in the applicant's mark as being consistent with a sub-brand of the opponent's mark which is particular to a range of cosmetic products targeted towards men, or that they would assume that there is an economic connection between the undertakings. Consequently, I consider there to be a likelihood of indirect confusion in relation to all goods for which I found a degree of similarity of medium and above. For the goods which I found to share only a low degree of similarity at best, which offsets the degree of similarity between the marks, having made a multi-factorial assessment of the various considerations in play, realistically, I do not consider that the average consumer would mistake those goods with those of the opponent and I therefore find there to be no likelihood of indirect confusion for those goods.

58. The opposition under section 5(2)(b) succeeds in respect of the class 3 goods for which I found similarity or identity, as listed at paragraphs 25 to 28 of this decision.

¹¹ Although the applicant has not provided any evidence to support either of these submissions.

¹² At point 5.b) of the counterstatement.

59. The opposition fails in respect of the remaining goods, as listed at paragraphs 29 and 30 of this decision.

CONCLUSION

60. The opponent has been partially successful. Subject to any successful appeal, the application of BLUE AHEAD LTD may proceed to registration in respect of the following class 3 goods only:

Fragrance sachets; Liquid soap for laundry; Dentifrices and mouthwashes; Fragrance emitting wicks for room fragrance; Household fragrances; Room fragrances; Air fragrance reed diffusers; Room perfume sprays; Fragrance sachets for eye pillows; Fragrances for automobiles; Fragrance for household purposes; Scented sachets; Fragrant sachets; Perfuming sachets; Perfumed sachets; Room perfumes in spray form; Scented linen sprays; Perfumes for cardboard; Refills for electric room fragrance dispensers; Scented room sprays; Essential oils as fragrances for laundry use; Piperonal fragrancing compounds; Perfumes for ceramics; Scented fabric refresher sprays; Sachets for perfuming linen; Linen (Sachets for perfuming -); Room fragrancing products; Incense spray; Scented linen water; Scented oils used to produce aromas when heated; Cushions impregnated with perfumed substances; Scented wood; Perfumed potpourris; Scented pine cones; Scented wax melts; Scented ceramic stones; Scented fabric refresher spray; Aromatic potpourris; Cushions filled with perfumed substances; Cushions impregnated with fragrant substances; Fragrance refills for non-electric room fragrance dispensers; Cushions filled with fragrant substances; Pomanders [aromatic substances].

COSTS

61. In these proceedings, both parties have enjoyed a share of success, with the greater part going to the opponent, who is, in principle, entitled to a contribution towards its costs. For parties without professional representation, such costs would

be based on £19 per hour,¹³ reflecting the number of hours spent on the different stages of the opposition. In a letter to the parties dated 10 June 2025, the Tribunal invited each of the unrepresented parties to indicate whether it wished to make a request for an award of costs and, if so, to complete and return the attached costs pro-forma by **8 July 2025**. The letter stated that “If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs”. As the pro-forma was not returned by the opponent, I can only make an order of costs in relation to the official fee of £100 incurred in filing the form TM7.

62. I therefore order BLUE AHEAD LTD to pay SOCHO LTD the sum of £100. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 4th day of March 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General

¹³ As was pertinent at the time these proceedings were launched and as set out in The Litigants in Person (Costs and Expenses) Act 1975 (as amended).