O/0183/26

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001557557 BY CYCLES ARGON-18 INC.

SUM

IN CLASS 12

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY UNDER NO. CA000507874 BY ALETE BIKES S.P.A.

Background and pleadings

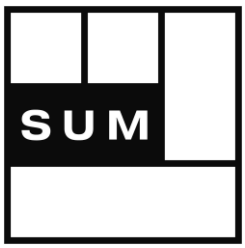
1. International trade mark 1557557 ("the IR") consists of the sign shown on the cover page of this decision. The Holder is CYCLES ARGON-18 INC. The IR is registered with effect from 23 September 2020 but claims priority from the 9 September 2020[1]. With effect from 23 September 2020, the Holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The date of protection of the IR in the UK is 27 April 2021.

2. The IR has protection in the UK for the following goods:

   Class 12: Racing bicycles and electric bicycles and structural parts therefor, namely, frames and bicycle parts, namely, forks, seat post, stem, handlebars, brakes, rims for wheels, cranks, wheels, saddles, gear wheels, all excluding cargo bikes.

3. On 4 October 2024, ALETE BIKES S.p.A.[2] ("the Applicant") applied to have the IR declared invalid under section 47 of the Trade Marks Act 1994 ("the Act"). The application is based upon section 5(2)(b) of the Act, and is directed at all of the goods in the IR.

4. Under section 5(2)(b), the Applicant relies upon the following trade mark:



UK Registration no. UK00918241698

[1] This is claimed from Canada trade mark no. 2050346

[2] The Application from Invalidity (TM26I) was originally filed by 'one less van Srl', however the earlier right UK00918241698 was assigned to ALETE BIKES S.p.A. on 10 February 2025. On 25 February 2026, ALETE BIKES S.p.A requested to be substituted as the Applicant in these proceedings and provided the relevant undertakings. The official letter of 27 February 2026 confirmed ALETE BIKES S.p.A as the new Applicant.

Filing date: 20 May 2020

Registration date: 10 September 2020

Relying upon the following goods:

Class 12: Bicycles; Vehicles.

5. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Applicant's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[3]

6. The Applicant claims there is a likelihood of confusion because the goods are identical or similar and the marks are similar.

7. The Holder filed a counterstatement denying the grounds of invalidation.

8. The Applicant is represented by Maguire Boss and the Holder is represented by FRKelly.

9. The Applicant filed evidence in these proceedings. Neither party requested a hearing, however the Applicant filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

10. 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.

[3] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

Evidence

11. The Applicant filed evidence in the form of the witness statement of David Tate, from Maguire Boss, the Applicant's Representative, signed and dated 24 April 2025. The witness statement is accompanied by exhibits DT1 – DT7. Exhibits DT1 to DT6 seek to show that assembled bicycles and bicycle parts may be sold via the same distribution channels and may be produced by the same undertaking. Exhibit DT7 contains a dictionary extract showing definitions of the word "sum".

12. I have given due consideration to all of the documents filed but will only refer to the evidence where appropriate to the extent that it is necessary in my decision.

DECISION

13. Section 5(2)(b) of the Act has application in invalidation proceedings pursuant to section 47 of the Act. Section 47 reads as follows:

> "47. (1) […]
>
> (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-
>
> > (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
> >
> > (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.
>
> (2ZA) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 5(6).

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered-

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(2D) - (2DA) [Repealed]

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(2F) Subsection (2A) does not apply where the earlier trade mark is a trade mark within section 6(1)(c)

(2G) An application for a declaration of invalidity on the basis of an earlier trade mark must be refused if it would have been refused, for any of the reasons set out in subsection (2H), had the application for the declaration been made onthe date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application.

(2H) The reasons referred to in subsection (2G) are-

(a) that on the date in question the earlier trade mark was liable to be declared invalid by virtue of section 3(1)(b), (c) or (d), (and had not yet acquired a distinctive character as mentioned in the words after paragraph (d) in section 3(1));

(b) that the application for a declaration of invalidity is based on section 5(2) and the earlier trade mark had not yet become sufficiently distinctive to support a finding of likelihood of confusion within the meaning of section 5(2);

(c) that the application for a declaration of invalidity is based on section 5(3)(a) and the earlier trade mark had not yet acquired a reputation within the meaning of section 5(3).

(3) […]

(4) […]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed."

14. As the Applicant's earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

Section 5(2)(b)

15. Section 5(2)(b) of the Act is as follows:

> "5(2) A trade mark shall not be registered if because-
> …
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

16. Due to its earlier filing date, the trade mark upon which the Applicant relies qualifies as an earlier trade mark pursuant to section 6 of the Act. The earlier mark has not completed its registration process more than five years before the relevant date (the filing date of the Holder's IR). Accordingly, the use provisions at section 47(2A) of the Act do not apply. The Applicant may rely on all of the goods it has identified without demonstrating that it has used its mark.

Section 5(2)(b) - case law

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

18. The goods for comparison are as follows:

Applicant's goods	Holder's goods
Class 12: Bicycles; Vehicles.	Class 12: Racing bicycles and electric bicycles and structural parts therefor, namely, frames and bicycle parts, namely, forks, seat post, stem, handlebars, brakes, rims for wheels, cranks, wheels, saddles, gear wheels, all excluding cargo bikes.

19. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

> "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".

20. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice

of the European Union ("CJEU") in *Canon,* Case C-39/97, the court stated at paragraph 23 that:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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.

21. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

    (a) The respective uses of the respective goods or services;

    (b) The respective users of the respective goods or services;

    (c) The physical nature of the goods or acts of service;

    (d) The respective trade channels through which the goods or services 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 or services 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 or services in the same or different sectors.

22. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.[4]

23. 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 Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),* Case T-325/06, the GC stated that "complementary" means:

> "...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."

Racing bicycles and electric bicycles […] all excluding cargo bikes.

24. The Applicant's above goods are types of bicycles. I consider these goods to be encompassed by the Opponent's broad category "Bicycles". They are therefore identical on the principle outlined in *Meric.*

[…] Structural parts therefor, namely, frames and bicycle parts, namely, forks, seat post, stem, handlebars, brakes, rims for wheels, cranks, wheels, saddles, gear wheels, all excluding cargo bikes.

25. The Holder's above goods are all component parts of bicycles. I bear in mind in my comparison of these goods that they are limited to exclude cargo bikes. As set out in *Les Éditions Albert René v OHIM*,[5] it is clear that just because a particular good is used as a part, element or component of another, it should not result in a finding of identity/similarity between those goods. However, it does not mean that

[4] *Separode Trade Mark* (BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).
[5] Case T-336/03

there can never be similarity between such goods where there is overlap in the factors identified in *Treat.*

26. I consider that the nature, method of use and purpose of the Holder's specific component parts will differ to the Applicant's pre-assembled "bicycles". However, there will be an overlap in user, as a cyclist may seek to accessorise and/or replace parts of their bicycle. I do not consider that the goods are in competition, as a consumer would not decide to buy handlebars or seat posts, for example, in place of a finished, pre-assembled bicycle. The respective goods are complementary, as component parts of bicycles are indispensable to bicycles themselves in such a way that customers may think that the responsibility for those goods lies with the same undertaking.

27. I note that the Applicant filed evidence of three retailers which sell both bicycles and bicycle parts.[6] While this evidence is limited in its nature, I concur with what the Applicant is attempting to show in that I consider that it is commonplace in trade for the goods at issue to be sold alongside one another. I am therefore satisfied that a consumer would expect the same undertaking to provide both component parts of bicycles and ready built bicycles, which will both be sold in specialist bicycle shops and/or retailers of sporting goods. Overall, I consider the goods to be similar to between a medium degree.

Average consumer and the purchasing act

28. It is necessary for me to determine who the average consumer is for the goods in question; I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.

29. 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 in question: *Lloyd Schuhfabrik*

[6] Witness statement of David Tate and corresponding exhibits DT1 – DT6.

Meyer, Case C-342/97. In *Hearst Holdings Inc, Fleischer Studios Inc v A. V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "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."

30. I consider the average consumer for the goods at issue to be members of the general public with an interest in cycling, either as a hobby or as a mode of transport. The goods will be self-selected from retail outlets or their online equivalents. Given the process of selection, the marks' visual impact is likely to play the greater role, though I do not discount the opportunity for aural recommendations made, for example, by salespeople. The cost of the products will vary, from low-cost parts such as brakes, to higher-cost fully assembled bicycles. The goods will likely be purchased infrequently, however, some parts and fittings may be replaced more frequently than others. Various factors are likely to be taken into consideration during the purchasing process, including the cost, aesthetic appearance and durability. Weighing all factors, I find that the average consumer will apply a medium degree of attention to the purchase.

Comparison of marks

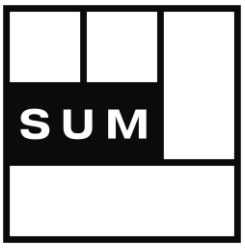
31. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant

components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> ".....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

32. 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.

33. The respective trade marks are shown below:

Applicant's trade mark	Holder's IR
	**SUM**

34. The Holder's mark consists of a single word, "SUM", absent of any stylisation or embellishments; its overall impression lies solely in that word.

35. The Applicant's mark consists of a square which contains two squares and two rectangles. These internal shapes are positioned at the top, bottom and right-hand side of the background shape: they do not overlap. To the left of the mark is the word "SUM", presented in capital letters in a white typeface inside a black rectangle. Bearing in mind that the eye is naturally drawn to the element of the

mark that can be read, I consider that the word "SUM" dominates the overall impression of the mark, with the figurative elements playing a lesser role.

36. Visually the marks coincide in the word "SUM", which is presented in capital letters in both marks. The figurative elements of the Applicant's mark are a point of visual difference, however I am of the view that the word "SUM", present in both marks, will play the greater role in the overall impression of the marks. Overall, I consider the marks to be visually similar to a medium to high degree.

37. Aurally, both marks contain the word "SUM", which will be pronounced in the ordinary way. As the figurative elements in the Applicant's mark will not be articulated, I consider the competing marks to be aurally identical.

38. Conceptually, the ordinary dictionary word "SUM" appears in both marks. The Applicant filed several definitions of the word sum, inter alia 'the result of the addition of numbers, quantities, objects, etc".[7] I consider the average consumer will recognise the word "SUM" in both marks as referring to a mathematical term relating to addition. The figurative device element in the Applicant's mark will not, in my view, convey any message to the consumer. Overall, I consider the marks to be conceptually identical.

Distinctive character of the earlier trade mark

39. 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. In *Lloyd Schuhfabrik*, the CJEU stated that:

> "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

[7] Opponent's witness statement of David Tate and corresponding Exhibit DT7.

undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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)."

40. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

41. The Applicant has not filed any evidence to support that the earlier mark's distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.

42. The Applicant's mark comprises of the word "SUM" and a figurative device element. "SUM" is an ordinary dictionary word which has no obvious allusive or descriptive meaning in connection to the goods for which the Applicant's mark is registered. With regards to the figurative element, I appreciate that it will not be overlooked or ignored, however, it is not particularly striking, and I do not consider that it will add to the distinctiveness of the mark to any material degree. Overall, I find that the Applicant's mark is inherently distinctive to a medium degree.

Likelihood of Confusion

43. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

44. Earlier in this decision, I found that:

- I have found the marks to be visually similar to a high degree.
- I have found the marks to be aurally identical.
- I have found the marks to be conceptually identical.
- I have found the earlier mark to be inherently distinctive to a medium degree.
- I have identified the average consumer to be members of the general public, who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium degree of attention will be paid during the purchasing process.
- I have found the parties' goods to be between identical and similar to a medium degree.

47. Taking all of the above into account, the fact that the average consumer rarely has the opportunity to compare marks side-by-side and will instead encounter them in different settings at different times will, to my mind, lead the average consumer to mistake one mark for the other, even for those who are paying a medium degree of attention during the purchasing process. Even where the purchasing process is primarily visual, I consider that the average consumer would easily overlook or misremember the figurative element in the Applicant's mark and pin their recollection on the word "SUM. Consequently, taking all of the above into account, I consider that there is a likelihood of direct confusion for all the goods.

48. I now proceed to consider whether there exists a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> - 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).

- 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.).

- 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)".

48. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 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.

49. I consider that the shared "SUM" element in the respective marks will lead consumers to conclude that the marks originate from the same or economically linked undertakings. If the average consumer notices the presence of the figurative element within the Applicant's mark, which is not present in the Holder's mark, I am satisfied that they would perceive it as an alternative or updated mark indicative of re-branding (in line with the second of the Purvis categories). I consider that it is not uncommon for undertakings to undergo a brand 're-fresh' or 'brand-revamp' from time to time to accommodate changes in marketing considerations. Consequently, I consider there to be a likelihood of indirect confusion for all the goods.

CONCLUSION

45. The application for invalidation under section 5(2)(b) has been successful. Subject to any successful appeal, the IR will be declared invalid in its entirety.

COSTS

46. The Applicant has been successful and is entitled to a contribution towards its costs based upon the scale set out in Tribunal Practice Notice 1/2023. I take into account that the evidence filed to support the application was of little assistance to me in making my decision, which is reflected in the costs awarded. In the circumstances, I award the Applicant the sum of £1100, calculated as follows:

Official fee	£200
Preparing the application for invalidity and considering the counterstatement	£250
Preparing evidence	£300
Preparing submissions in lieu of a hearing	£350
Total	**£1100**

47. I therefore order CYCLES ARGON-18 INC. to pay ALETE BIKES S.p.A. the sum of £1100. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 5th day of March 2026

Emma Rees
For the Registrar