

O/0205/26

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION OF INTERNATIONAL
REGISTRATION NO. WO1750633 BY

ELLEX MEDICAL PTY. LTD.

FOR THE PROTECTION OF THE FOLLOWING TRADE MARK
IN CLASSES 9 AND 10:

INTEGRE

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 446465

BY

LAI S.R.L.

Background and pleadings

1. Ellex Medical Pty. Ltd., (“the holder”) designated International Registration No. WO1750633, shown on the cover of this decision, for protection in the UK on 17 April 2023, claiming a priority date of 18 October 2022 (based upon an Australian mark¹) (“the contested mark”). The designation was accepted and published for opposition purposes on 15 December 2023 in respect of the following goods:

Class 9 Lasers, other than for medical use; laser installations, other than for medical use; and parts and accessories thereof, namely laser delivery systems, control panels, power supplies, stands, carry cases, accessory adaptors, magnification changers, beam splitters, observation tubes, camera adaptors, eyepieces, safety goggles; laser diode photocoagulators and parts thereof, namely slit lamp delivery systems and adaptors and safety filters therefor; laser scalpels, for scientific research in laboratories, and parts and accessories thereof.

Class 10 Medical apparatus and instruments for the diagnosis and treatment of retinal disease; diagnostic and treatment apparatus and equipment for use in ophthalmology; medical lasers, including ophthalmic lasers incorporating laser delivery systems, control panels, power supplies, accessory adaptors, magnification changers, beam splitters, observation tubes, camera adaptors; laser diode photocoagulators incorporating slit lamp delivery systems and adaptors and safety filters, for medical purposes; lasers for medical purposes; lasers for ophthalmic purposes; lasers for veterinary purposes; medical instruments incorporating lasers; laser pointers for medical use; laser installations for medical use; laser instruments for medical use; lasers capable of producing pulsating laser beams [for medical use]; laser cutting tools for medical use; laser machining tools for medical use; gas laser apparatus for medical treatment; solid state lasers for medical purposes; laser light treatment instruments for medical use; laser beam delivery instruments for medical use; lasers incorporating optical fibres for medical use; apparatus for applying laser

¹ Australian TM No. 2308464

radiation [for medical purposes]; apparatus for the application of laser radiation for medical purposes; all goods for use in ophthalmic diagnosis and therapy.

2. On 15 March 2024, LAI S.R.L. (“the opponent”) partially opposed² the designation on the basis of Sections 5(1), 5(2)(a) and (b) of the Trade Marks Act 1994 (“the Act”)³. This is on the basis of its earlier UK Trade Marks (“the earlier marks”):



UKTM no. 801514884

Filing date 27 November 2019; registration date 17 August 2020.

Claiming a priority date of: 17 July 2019

Priority country: Italy⁴

Relying upon all goods as follows:

Class 3 Non-medicated soaps; perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions; non-medicated toothpastes.

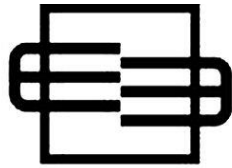
Class 10 Deep heat massage apparatus; electrophoresis apparatus; apparatus for electrical muscle stimulation; electronic stimulation apparatus for physiotherapy; medical skin enhancement apparatus using lasers; lasers for medical purposes; laser installation for medical use; laser light treatment instruments for medical use; visible light treatment instruments; pressure drainage equipment; radiofrequency equipment for hair removal; ultrasound diagnostic apparatus for therapeutic use; portable medical equipment for hair removal; electrical appliances for aesthetic massage; generating vibration apparatus for massages; scalp massage devices; infrared apparatus for curative use; infrared lamps for medical use; equipment for hair treatments.

(“the 884 mark”)

² The opposition is brought against the holder’s class 10 goods only

³ I note that the opposition in respect of the 884 mark is brought under sections 5(1), 5(2)(a) and 5(2)(b) and the opposition in respect of the 861 mark is brought under section 5(2)(b)

⁴ Italian TM No. 302019000050943



INTEGRÉE

International Registration (“IR”) No: WO1662861

UK designating date: 17 November 2021

Date protection granted in the UK: 18 August 2022

Claiming a priority date of: 21 September 2021

Priority country: Italy⁵

Relying on all of its goods in classes 3 and 10 as set out in full in Annex 1.

(“the 861 mark”)

3. The opponent claims that there is a likelihood of confusion on the basis that the marks are similar, and the goods are either identical or highly similar leading to a likelihood of confusion, including a likelihood of association, and that the contested mark should be refused registration.

4. The holder filed a counterstatement denying the claims made.

5. In accordance with section 6 of the Act, the marks relied upon by the opponent are considered earlier marks. The marks have not been registered for five years as at the priority date of application for the contested mark and so, in accordance with section 6A of the Act, they are not subject to proof of use; the opponent may rely upon all the goods of its registrations as claimed.

⁵ Italian TM No. 302021000158357

6. The holder is represented by Dr Walther Wolff & Co. The opponent is represented by Beck Greener LLP. Neither party filed evidence or written submissions. No hearing was requested and so this decision is taken following a careful perusal of the papers.

Relevance of EU Law

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

Decision

Section 5(1), 5(2)(a) and 5(2)(b)

8. Section 5(1) of the Act reads as follows:

“5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

9. Section 5(2)(a) of the Act is as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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”.

10. 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”.

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



“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

Preliminary issues

12. Within their TM7 of the 15 March 2024, the opponent has pleaded their opposition in respect of the 884 mark based on sections 5(1), 5(2)(a) and 5(2)(b) of the Act. As per the legislation set out above, in order for an opposition to succeed under sections 5(1) and 5(2)(a), the marks must be identical. In *SA Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the CJEU held that:

“54. ... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

13. The respective marks are shown below:

The 884 mark	Contested trade mark
	

14. The 884 mark is a figurative mark which consists of the word INTÉGRÉE in an orange font. To the left of the word is an orange geometric shape, while the contested mark is a word only mark. The stylisation of the 884 mark would not go unnoticed by an average consumer. I find that the marks are not identical. The opposition under section 5(1) and 5(2)(a) fails. I will therefore proceed with my assessment under section 5(2)(b).

Relevant law

13. 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 Pairs Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

15. The competing goods are shown in paragraphs one, two and Annex 1 of this decision.

16. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“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.”

17. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

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

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

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 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.”

20. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL O/255/13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

21. I bear in mind that it is permissible to group goods together for the purposes of the assessment⁶.

⁶ *Separode Trade Mark* O/399/10

22. The holder submits:

“11. ...The holder admits that certain of the goods in class 10 of the opposed IR 1 750 633 are similar to or identical with certain goods in class 10 of the Opponent’s registered marks UK 00801514884 and IR 1 662 861, namely apparatus and instruments for medical use, treatment apparatus for use in medicine, massage apparatus and lasers of various kinds...Notwithstanding the mentioned similarities or correspondences of the goods in class 10 of the respective marks the Holder contends that for reasons stated further above its mark and those of the Opponents are sufficiently distinguishable for confusion not to occur in practice, especially since class 10 goods generally and medical equipment particularly are subject to careful selection by informed purchasers and accordingly the Holder denies the allegations with respect to confusion in paragraphs 18 to 20 of the Grounds of Opposition”.

23. The opponent submits:

“16. The goods for which the earlier marks are registered in class 10 would be included in the specification of goods applied for in class 10. By way of illustration, medical apparatus for skin care using lasers for which the earlier marks are registered and medical lasers for which the earlier marks are registered will be included in the goods for which the Applicant is seeking registration in class 10 being various surgical, medical, dental and veterinary apparatus and instruments including lamps and/or lasers.

17. Consequently, the Opponent submits that the goods applied for are similar to the goods for which the mark earlier marks are registered or indeed identical to the goods for which the earlier marks are registered in class 10.”

24. The holder has admitted within their submissions that some of their goods in class 10 are identical or similar to those goods in the opponent’s specification. However, as the holder has not proceeded to identify all of the terms that are similar, or to what extent they are similar, I will proceed with my comparison of the goods.

Class 10

Lasers for medical purposes

25. The opponent's 884 and 861 marks both include the term *Lasers for medical purposes* in class 10. This is self-evidently identical with the holder's above term.

Medical apparatus and instruments for the diagnosis and treatment of retinal disease; diagnostic and treatment apparatus and equipment for use in ophthalmology

26. The opponent's marks both include the term *Lasers for medical purposes* in class 10. I consider the holder's above terms to be wider terms which could include different types of apparatus and equipment/instruments for use in ophthalmology, including lasers. The holder's terms are wide and therefore encompass the opponent's term on the principles outlined in *Meric*.

Medical lasers, including ophthalmic lasers incorporating laser delivery systems, control panels, power supplies, accessory adaptors, magnification changers, beam splitters, observation tubes, camera adaptors; lasers for ophthalmic purposes; medical instruments incorporating lasers; laser pointers for medical use; laser installations for medical use; laser instruments for medical use; lasers capable of producing pulsating laser beams [for medical use]; laser cutting tools for medical use; laser machining tools for medical use; gas laser apparatus for medical treatment; solid state lasers for medical purposes; laser light treatment instruments for medical use; laser beam delivery instruments for medical use; lasers incorporating optical fibres for medical use; laser diode photocoagulators incorporating slit lamp delivery systems and adaptors and safety filters, for medical purposes;

27. The opponent's marks both include the term *Lasers for medical purposes* in class 10. I consider the holder's above terms all include different types of lasers for medical purposes, for use in ophthalmic diagnosis and therapy (as per the holder's limitation). The opponent's term is wide and therefore encompasses the holder's terms on the principles outlined in *Meric*.

Lasers for veterinary purposes

28. In the absence of specific submissions, I consider that veterinarians provide medical treatment to animals in the event of injury or illness. The opponent's marks

both include the term *lasers for medical purposes*. I consider that there is likely to be an overlap in purpose and use, as the goods are lasers which are used to treat medical conditions, however, users will differ as the opponent's goods will be used by doctors to treat people, whereas the holder's goods will be used by veterinarians to treat animals. The nature of the goods is likely to be similar. Trade channels will differ. I do not consider that the goods are in competition, nor do I find complementarity. I find the goods similar to a medium degree.

Apparatus for applying laser radiation [for medical purposes]; apparatus for the application of laser radiation for medical purposes;

29. In the absence of specific submissions, I consider the above terms to relate to apparatus which applies laser radiation for medical purposes, to be used in ophthalmic diagnosis and therapy (as per the holder's limitation). The opponent's term includes *lasers for medical purposes*. I consider that the purpose of the goods may differ, as the purpose of the holder's apparatus is to apply laser radiation, whereas the opponent's term includes the laser itself, the purpose of which would be to treat a medical condition. The nature of the goods is also likely to differ; however, users may overlap. Trade channels may also overlap. I do not consider that the goods are in competition. However, there may be complementarity as a consumer may assume that apparatus which applies laser radiation and the lasers themselves are produced by the same economic undertakings, and the one is important or indispensable to the other. I find the goods similar to a medium degree.

Average consumer and the purchasing act

30. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

31. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties 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.”

32. The parties’ goods are specialist medical goods, being medical lasers and apparatus, for which the average consumer will comprise of medical professionals, specifically ophthalmology departments and practitioners and veterinary surgeons offering that specialty of treatment. The level of attention paid to the purchasing process will be high because of the importance of the procedures and the diagnostic and therapeutic uses to which the goods will be put. The purchasing process is likely to be primarily visual, from medical catalogues and websites, although there is also likely to be an aural aspect to the purchase, such as discussions between users and medical company representatives.




Comparison of marks

33. It is clear from *Sabel BV v. Puma AG*, Case C-251/95 (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in 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.”

34. 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.

35. The respective trade marks are shown below:

Earlier trade marks	Contested trade mark
 <p data-bbox="408 969 600 1003">the 861 mark</p>  <p data-bbox="408 1301 600 1335">the 884 mark</p>	

36. The holder submits:

“5. The holder repeats that the mark ... IR 1 662 861 are composite marks consisting of a device (different as between the marks) and a French word INTÉGRÉE (common to both marks) in upper case and in feminine form as indicated by the terminal ‘E’. The French origin of the word is made clear by the two accents, in conventional stylised (horizontal) form, above the first and the second letter ‘E’. The word in each mark is therefore the French dictionary word ‘intégrée’ meaning, in English, integrated and a past participle of the verb

'integrate' as well as adjective, both used in relation to a feminine subject when in the French form 'intégrée'

...

10. Having regard to the foregoing reasons the Holder denies that either of the Opponent's earlier marks is similar to the opposed mark as submitted in paragraphs 8, 11, 13 and 20 of the Grounds of Opposition. Further, having regard to the foregoing reasons and as must be self-evident to the Opponent itself, the multiple elements present in the Opponent's composite marks and the different appearance, pronunciation, language and concept (dictionary word as opposed to invented word) of the word INTÉGRÉE in relation to the opposed mark comprehensively invalidate the Opponent's repeated submission of identity of the compared marks made in paragraphs 8, 9, 10, 11, 12 and 20 of the Grounds of Opposition".

37. The opponent submits:

"8. The Opponent submits that the mark applied for is identical to the earlier marks. In the alternative, the Opponent submits that the mark applied for is similar to the earlier marks.

9. The mark applied for is phonetically identical to the earlier marks because it is the identical word simply omitting the last "E" which may be viewed as nothing more than a misspelling. The earlier mark comprises the French word "Integrated" and the mark applied for comprises of the same word. The only difference being that the earlier mark is in the feminine singular and the mark applied for is in the masculine singular.

10. The Opponent submits that the mark applied for is conceptually and phonetically identical to the earlier mark because it is the identical word merely in the masculine singular. The additional "E", used to denote the feminine singular, is silent.

11. Consequently, the mark applied for is phonetically, conceptually and visually either identical or highly similar.

12. While it is admitted that the earlier marks have an additional letter E and some device elements, these do not detract from the overall visual identity between the earlier marks and the mark applied for because they are the identical word.

13. In the alternative, it is submitted that the mark applied for is visually highly similar to the earlier marks.”

Overall impression

38. The 861 mark is a figurative mark which consists of the word INTÉGRÉE presented in a black font, which means that it can be used in any colour (although not a complex colour arrangement). Above the word is the outline of a square in black. Through the middle of the square there is a black geometric shape which is split in the middle, with the left-hand side being reproduced slightly lower than the right. The eye is naturally drawn to the word element of the mark. The device contributes to the mark overall, but to a lesser extent as it will be seen as a decorative element.

39. The 884 mark is a figurative mark which consists of the word INTÉGRÉE in an orange font. To the left of the word is an orange geometric shape. The eye is naturally drawn to the word element of the mark. The device contributes to the mark overall, but to a lesser extent as it will be seen as a decorative element.

40. The holder's mark consists of the word only mark, INTEGRE. The overall impression of the mark lies in the word itself.

Visual comparison

41. The respective marks overlap to the extent that the entirety of the word in the contested mark is identical with the first 7 letters of the earlier marks, differing only in the additional letter 'E' at the end of the earlier marks. I also note that there is an accent above two of the letters in the earlier marks which are not present in the contested mark. In respect of each of the earlier marks, there is also an additional element, in the form of a device (which differs as set out above), with there being no counterpart in the contested mark. Given these factors and weighing up the similarities against the

differences, I consider that the contested mark and the earlier marks are visually similar to a medium degree.

Aural Impression

42. Neither mark is an English dictionary word and therefore, to the average consumer, it is not clear how either will be pronounced.

43. No articulation will be given to the figurative element of the earlier marks and therefore they will be referred to by reference to the word only. I note that both marks have three syllables. The holder submits that the marks will be given a French pronunciation as the words are widely known; however, I do not consider that this will be the case for average UK consumers. The earlier marks will likely be pronounced as INT-E-GREY or INT-E-GREE, whereas the contested mark is likely to be pronounced as INT-E-GRUH. The point of aural overlap lies at the beginning of the word, which is the same in both marks⁷. The difference in pronunciation arises from the additional letter 'E' at the end of the earlier marks. Overall, I find a high degree of aural similarity between the marks.

Conceptual comparison

44. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer, as highlighted in numerous judgments of the GC and the CJEU⁸.

45. The opponent submits:

“The earlier mark comprises the French word “Integrated” and the mark applied for comprises of the same word. The only difference being that the earlier mark is in the feminine singular and the mark applied for is in the masculine singular.”

46. I note the opponent’s submissions; however, I do not consider that the meaning of INTÉGRÉE / INTEGRE would be sufficiently well known to a substantial proportion of average consumers, and therefore the word will either appear to be a made-up word,

⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of word tend to have more visual and aural impact than the ends.

⁸ *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29

or the average consumer will recognise the word as being French, or from an unidentified foreign language, but not know its meaning. I believe that both INTÉGRÉE / INTEGRE, will be considered to be meaningless terms by the average consumer

47. The 861 mark is a figurative mark which consists of the word INTÉGRÉE presented in a black font. The mark also contains a pictorial element which appears as set out above. The 884 mark consists of the word INTÉGRÉE presented in an orange font, with a pictorial element as set out above. I consider that the average consumer will believe the pictorial element of both earlier marks to be a decorative element conveying no conceptual message. As such, I find the marks conceptually neutral.

Distinctive character of the earlier trade mark

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

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

49. 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. As no evidence has been filed in support of this, I only have the inherent position to consider.

50. The 861 mark is a figurative mark which consists of the word INTÉGRÉE presented in a black font. Above the word is a device which appears as set out above. The word, INTÉGRÉE, plays the greater role in the overall impression of the mark, and whilst the device contributes to the mark overall, it is to a lesser extent as it will be seen as a decorative element.

51. The 884 mark is a figurative mark which consists of the word INTÉGRÉE presented in orange font, with a device to the left of the word, as set out above. The word, INTÉGRÉE, plays the greater role in the overall impression of the mark, as I have found the device will be seen as a decorative element.

52. I have found that the average consumers for the goods in issue will be unaware of the meaning of the word INTÉGRÉE, and would consider this to be a made-up word, or a word from an unidentified foreign language. Furthermore, the earlier marks are not descriptive of the goods for which they are registered, nor do they allude to any quality of those goods. I consider the earlier marks overall to have a high level of inherent distinctiveness.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

53. 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.

54. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

55. I have found as follows:

- That the goods at issue range from being identical (either self-evidently or on the principles outlined in *Meric*), to similar to a medium degree;
- I have identified that the average consumer will be medical professionals. They will select the goods primarily by visual means, although I do not discount an aural component;
- I have concluded that a high degree of attention will be paid during the purchasing of goods;
- The contested mark is visually similar to the earlier marks to a medium degree;
- The contested mark is aurally similar to the earlier marks to a high degree;
- I have found the contested mark and the earlier marks to be conceptually neutral;
- I have found the earlier marks overall to be inherently distinctive to a high degree;

56. Upon considering the above factors, and bearing in mind the principle of imperfect recollection, I consider the present case represents an example of direct confusion. I consider that the consumer, upon seeing the contested mark 'INTEGRE', is unlikely to recall the exact spelling of the earlier marks, 'INTÉGRÉE', despite the high degree

of attention paid during the purchasing process, and whilst the earlier marks both have a figurative element, I consider that it will be seen as decorative. Given the overall similarity between the words both visually and aurally, and the fact that the goods are either identical or similar to a medium degree, I consider that the average consumer will not remember whether the mark ends with one E or two. I also consider that the accent above the 'E' in the earlier marks may also be improperly recalled and that this will lead to the differences in the words being misremembered. This is particularly so because consumers rarely have the opportunity to compare marks side by side.

57. In case I am wrong about my finding of direct confusion, I will move on to consider whether there is indirect confusion. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (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)."

58. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal⁹. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark; this is mere association not indirect confusion¹⁰. The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion¹¹.

59. I consider that the consumer, upon seeing the contested mark INTEGRE, is unlikely to recall the exact spelling of 'INTÉGRÉE' in the earlier marks, and as I have stated, the differences in the words themselves are likely to be misremembered. However, upon considering the stylisation of the earlier marks, the average consumer will go through the mental process outlined in *L.A Sugar*. I have found that the figurative element of the earlier marks will be seen as decorative. In this instance I consider that the average consumer is likely to find the figurative earlier marks and the contested mark to be different versions of the same mark, i.e. one used on packaging or advertising for example, as opposed to the word only version (as in the contested mark when the words are misremembered) which might be seen as one used in text or in publications, with both marks belonging to the same owner. Therefore, I find that if I am wrong about there being direct confusion, there is a likelihood of indirect confusion.

⁹ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207

¹⁰ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

¹¹ *Liverpool Gin Distillery*

Conclusion

60. The opposition against the goods in Class 10 is successful under section 5(2)(b). Therefore, subject to appeal, the designation will be refused in relation to the following goods:

Class 10 Medical apparatus and instruments for the diagnosis and treatment of retinal disease; diagnostic and treatment apparatus and equipment for use in ophthalmology; medical lasers, including ophthalmic lasers incorporating laser delivery systems, control panels, power supplies, accessory adaptors, magnification changers, beam splitters, observation tubes, camera adaptors; laser diode photocoagulators incorporating slit lamp delivery systems and adaptors and safety filters, for medical purposes; lasers for medical purposes; lasers for ophthalmic purposes; lasers for veterinary purposes; medical instruments incorporating lasers; laser pointers for medical use; laser installations for medical use; laser instruments for medical use; lasers capable of producing pulsating laser beams [for medical use]; laser cutting tools for medical use; laser machining tools for medical use; gas laser apparatus for medical treatment; solid state lasers for medical purposes; laser light treatment instruments for medical use; laser beam delivery instruments for medical use; lasers incorporating optical fibres for medical use; apparatus for applying laser radiation [for medical purposes]; apparatus for the application of laser radiation for medical purposes; all goods for use in ophthalmic diagnosis and therapy.

61. As the goods in Class 9 were not opposed, International Registration No. WO1750633 is granted protection in the UK for the following goods:

Class 9 Lasers, other than for medical use; laser installations, other than for medical use; and parts and accessories thereof, namely laser delivery systems, control panels, power supplies, stands, carry cases, accessory adaptors, magnification changers, beam splitters, observation tubes, camera adaptors, eyepieces, safety goggles; laser diode photocoagulators and parts thereof, namely slit lamp delivery systems and adaptors and safety filters therefor; laser scalpels, for scientific research in laboratories, and parts and accessories thereof.

COSTS

62. The opponent has been successful and is entitled to a contribution towards its costs in line with TPN 1/2023. In the circumstances I award the opponent the sum of £350 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Filing a notice of opposition and considering the holder's counterstatement:	£250.00
Official fee:	£100.00
Total:	£350.00

63. I therefore order Ellex Medical Pty. Ltd. to pay LAI S.R.L. the sum of £350.00. 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 12th day of March 2026

LA Bailey

For the Registrar

Annex 1

Class 3

Soaps; perfumery, essential oils, cosmetics, hair lotions; Cologne; lavender water; toilet waters; odorous waters; decorative nail stickers; adhesives (glues) for cosmetic purposes; adhesives for fixing false eyelashes; aloe vera prepared for cosmetic use; amber (perfumery); flavorings (essential oils); flavorings for beverages (essential oils); flavorings for cakes (essential oils); astringents for cosmetic purposes; conditioner not for medical use; bases for flower scents; cotton sticks for cosmetic purposes; rouge; wax for depilating; mustache wax; false eyelashes; make-up powder; dyes for the toilet; corundum (abrasive); cosmetics; eyelash cosmetics; eyebrow cosmetics; cosmetic creams; skin whitening creams; bleaches for cosmetic purposes; deodorants for human or animal use (perfumery); essence of star anise; mint essence; bergamot essences; flower extracts (perfumery); massage gels not for medical use; geraniol; greases for cosmetic purposes; incense; ionone (perfumery); nail varnishes; almond milk for cosmetic purposes; milk for the toilet; after shave lotions; hair lotions; lotions for cosmetic purposes; lip polishers; mascara; beauty masks; eyebrow pencils; pencils for cosmetic purposes; mint for perfumery; decorative motifs for cosmetic purposes; musk (perfumery); nécessaires of cosmetics; neutralizers for perms; toilet oils; essential oils of cedar; essential oils of lemon; oils for perfumery; oils for cosmetic purposes; gaultheria oil; jasmine oil; lavender oil; almond oil; rose oil; cotton wool for cosmetic purposes; ointments for cosmetic purposes; perfumed potpourris; tanning preparations (cosmetics); cosmetic preparations for the bathroom; preparations for personal or sanitary hygiene, intimate deodorants; preparations for waving hair; preparations for sun screens; cosmetic preparations for slimming treatments; cosmetic products for skin care; depilatory products; anti-sweat toilet preparations; fumigation preparations (perfumes); make-up preparations; nail care preparations; cleaning products; shaving preparations; toilet preparations; smoothing preparations; leather whitening preparations; preparations for removing make-up; preparations for removing dyes; perfumes; room fragrances; lipsticks; red for polishing; bath salts not for medical use; almond soap; shaving soap; soap bars; foot sweat soaps; soaps against perspiration; deodorant soaps; medicinal soaps; soaps for reviving; shampoo; dry shampoo; toilet powder; cosmetic dyes; beard dyes; napkins impregnated with

cosmetic lotions; turpentine (product for stain removal); tripolo for polishing; false nails; lip gloss; makeup pencil cases.

Class 10

Deep heat massage apparatus, electrophoresis apparatus, electrical muscle stimulation apparatus, electro stimulation apparatus for physiotherapy, medical apparatus for skin care using lasers, medical lasers, laser implants for medical use, instruments for treatments lasers for medical use, instruments for treatment with visible light, equipment for pressure drainage, radiofrequency equipment for hair removal, ultrasound diagnostic equipment for therapeutic use, portable medical equipment for hair removal, electrical apparatus for aesthetic massage, vibration generating apparatus for massages, scalp massage devices, infrared apparatus for medical purposes, infrared lamps for medical purposes, equipment for hair treatments; medical apparatus and instruments; massage apparatus; aesthetic massage apparatus; microdermabrasion apparatus; hot air therapy apparatus; galvanic therapeutic apparatus; abdominal belts; electric belts for medical purposes; elastic bandages; massage gloves; gloves for medical use; lasers for medical purposes; vibration massagers (apparatus).