

O/0211/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 4117064

IN THE NAME OF

GENT COSMETICS LTD

TO REGISTER THE FOLLOWING TRADE MARK:

GENT Skincare for Men

IN CLASS 3

AND

OPPOSITION THERETO (UNDER NO. 452571)

BY

GANT AB

BACKGROUND

1) On 27 October 2024, Gent Cosmetics LTD ('the applicant') applied to register 'GENT Skincare for Men' as a trade mark in the UK. The application is made in respect of the following goods:

Class 3: Skincare cosmetics; Suncare lotions [for cosmetic use]; Anti-ageing creams [for cosmetic use]; Moisturising skin lotions [cosmetic]; Beauty serums; Skin cleansers [cosmetic].

2) The application was published in the Trade Marks Journal on 15 November 2024 and notice of opposition was later filed by Gant AB ('the opponent'). The opponent claims that the trade mark application offends under section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). The following mark, and goods covered by the same, are relied upon:

- **UKTM 906282776**

GANT

Class 3: Perfumery, cosmetics, hair lotions.

Filing date: 17 September 2007

Date of entry in register: 10 September 2008

3) It is claimed that the respective goods are either identical or highly similar and that the respective marks are similar, such that there exists a likelihood of confusion under section 5(2)(b) of the Act.

4) The trade mark relied upon by the opponent is a 'comparable trade mark (EU)' which is an earlier mark, in accordance with section 6 of the Act.¹ As that mark completed its registration procedure more than five years prior to the application date of the contested mark; it is subject to the proof of use conditions, as per section 6A of the Act. The opponent made a statement of use for all goods relied upon.

5) The applicant filed a counterstatement. The following points are made therein:

- The applicant 'disagrees with the Opposition against the Application under section 5(2)(b) of the Act'.
- It is accepted that the respective goods are similar.
- The applicant says nothing in response to the opponent's claims of a high degree of visual and aural similarity between the marks.
- As regards the conceptual comparison, the applicant states that 'it is denied that there will be any likelihood of confusion by reason of the complete conceptual difference between the earlier mark and the GENT element of the application. The earlier mark is made up, whilst the 'GENT' element is a standard shortening of the term 'GENTLEMAN'.
- It is accepted that the 'Skincare for Men' element is of lower distinctiveness than the word 'GENT' but the applicant points out that the mark must not be artificially dissected and the comparison must be made based upon a global appreciation.
- The average consumer will pay a high degree of attention.
- Proof of use is requested for the earlier mark.

6) The opponent is represented by Mewburn Ellis LLP. The applicant is represented by Freeman Harris Solicitors. Only the opponent filed evidence. This consists of a witness statement from Michael Azran, dated 13 June 2025, with Exhibits MA1-MA14

¹ Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register and have the same legal status as if they had been applied for and registered under UK law. A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

thereto. Neither party requested a hearing. Only the opponent filed written submissions in lieu.²

DECISION

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. Accordingly, this decision will refer to decisions of the EU courts which predate the UK's withdrawal from the EU.

Approach

8) Owing to the findings in this decision, and for reasons of procedural economy, I will assume that the opponent has shown genuine use in relation to the goods relied upon.

Section 5(2)(b)

9) Section 5(2)(b) of the Act states:

“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.”

² Dated 22 September 2025

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods

11) The goods to be compared are:

Opponent's goods	Applicant's goods
Class 09: Perfumery, cosmetics, hair lotions.	Class 3: Skincare cosmetics; Suncare lotions [for cosmetic use]; Anti-ageing creams [for cosmetic use]; Moisturising skin lotions [cosmetic]; Beauty serums; Skin cleansers [cosmetic].

12) In *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM Case T-133/05) ('*Meric*'), the General Court held 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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301,

paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedral v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

13) All of the applicant’s goods are types of cosmetics which fall within the opponent’s ‘cosmetics’. The goods are identical as per *Meric*.

Average consumer and the purchasing process

14) 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.

15) In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule

and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

16) The average consumer for the goods at issue is the general public. The purchasing act will be primarily visual. That said, the aural aspect should not be ignored because the goods may sometimes be the subject of discussions with sales representatives, for example. The average consumer may take in to account various factors when selecting the relevant goods such as suitability for skin-type, scent and composition. I would expect the level of attention paid during the purchase to be medium.

Comparison of marks

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

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

18) The marks are as follows:

Earlier mark	Contested mark
GANT	GENT Skincare for Men

19) The earlier mark consists of the single word, GANT, in which its overall impression lies. The contested mark is dominated by the first word, GENT. The entirely descriptive words, ‘Skincare for Men’, play a lesser role.

20) As I noted earlier, the applicant is silent in response to the opponent’s claims that the marks are visually and aurally highly similar. As such, I proceed on the basis that those specific claims are admitted.³

³ See, for example, the decision of the Appointed Person in *Skyclub*, BL O/044/21, [11] – [29]

21) Turning to the conceptual comparison, I do not consider that the earlier mark evokes any immediately graspable concept; it will be perceived as a meaningless invented word. Contrastingly, the meaning of the word 'GENT' in the contested mark will be grasped immediately, being a well-known abbreviation of the word 'gentleman'. Although the words 'Skincare for Men' also create a conceptual difference, they are entirely descriptive and therefore have little, if any, role to play in distinguishing the marks from a conceptual perspective. The marks are conceptually different.⁴

Distinctive character of the earlier mark

22) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion between it and the contested mark (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

⁴ See, for example, *Ruiz-Picasso and others v OHIM*, (Case C-361/04 P)

originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

23) The word GANT is likely to be perceived as an invented one with no meaning. As such, it is neither descriptive nor allusive in relation to any of the relevant goods. I find it to have a high degree of inherent distinctiveness.

24) I now turn to consider whether the evidence from Mr Azran establishes enhanced distinctiveness through use. Although invoices are provided showing the sale of Gant fragrances, these are internal in nature between a distributions company and Gant UK Limited.⁵ Further, whilst a list of Gant UK stores is provided, at which it is said that Gant products ‘are and have been sold’, it is not clear as to how many of the goods relied upon were sold at these stores or when.⁶ The images provided of the Gant stores also do assist because they do not appear to show any of the relevant earlier goods on display; rather they show clothing and shoes.⁷ Further, the examples of pages from authorised UK retailers showing Gant fragrances for sale are also not dated.⁸ Whilst the evidence does indicate that a number of units were purchased by The Perfume Shop/SA Designer Perfumes in September 2024 (4350 units), and by Gant UK Limited between Oct 2023 and Oct 2024 (4280 units in total),⁹ there is little else to show widespread promotion or recognition of the mark in the UK. For example, the number of reviews from UK consumers is modest (71 in total),¹⁰ none of the press coverage makes any mention of Gant in relation to the goods relied upon (instead referring to Gant as a fashion retailer/provider)¹¹ and, although the number of followers of the Gant social media pages are impressive on their face, it is not clear how many of these followers are from the UK.¹² In any event, the majority of the extracts from these social media accounts show use in relation to sportswear/fashion clothing, not the goods relied upon. There is only a small number of pages showing use in relation

⁵ Exhibit MA8

⁶ Azran [13]

⁷ Exhibit MA6

⁸ Exhibit MA7

⁹ Azran [19]

¹⁰ Exhibit MA12

¹¹ Exhibit MA13

¹² Azran [25]

to Gant fragrances.¹³ I find that the evidence from Mr Azran does not establish that the earlier mark's inherent distinctiveness has been enhanced through use in the UK in relation to any of the goods relied upon.

Likelihood of confusion

25) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

26) The respective goods are identical, and the marks are visually and aurally highly similar. These are factors weighing in the opponent's favour. However, the marks are conceptually different. Weighing all these factors, I find that an average consumer paying a medium degree of attention is unlikely to mistake one mark for the other, notwithstanding the potential for imperfect recollection and the high degree of inherent distinctiveness of the earlier mark. There is no likelihood of direct confusion. I would have reached the same conclusion even if I had found that the degree of attention paid was likely to be low (as opposed to medium).

27) I will now consider the likelihood of indirect confusion. In this connection, I bear in mind that in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 (*L.A. Sugar*), Mr Iain Purvis Q.C. (as he then was), sitting 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

¹³ Exhibit MA14

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)".

28) I also keep in mind that in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, 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. Furthermore, it is not sufficient that a mark merely calls to mind

another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

29) I bear in mind that the categories listed above in *L.A. Sugar* are, of course, not an exhaustive list of all the ways in which indirect confusion can occur; they are merely examples of the way in which it tends to occur.

30) I can see no proper basis for concluding that the consumer is likely to believe that the respective goods come from the same/linked undertaking(s). The contested mark does not appear to be an entirely logical brand extension of the earlier mark as per Mr Purvis' category (c). This is also not a case where the marks share the same common element which is 'so strikingly distinctive' as per Mr Purvis' category (a). As to whether the contested mark simply adds a non-distinctive element to the earlier mark, this would depend upon the respective words 'GANT' and 'GENT' being imperfectly recalled as being the same word, and the addition of 'Skincare for Men' being viewed as a non-distinctive addition. Whilst I bear in mind the potential for some imperfect recollection, I do not consider that the respective words 'GANT' and 'GENT' will be imperfectly recalled as being the same word, given the very clear conceptual difference between them. It follows that Mr Purvis' category (b) also does not apply. I also cannot see any other basis, outside of the categories identified in *L.A. Sugar*, for concluding that the average consumer is likely to be indirectly confused. **The opposition fails.**

COSTS

31) The applicant has been successful and is entitled to an award of costs. Using the guidance provided in Tribunal Practice Notice 1/2023, I award the applicant costs on the following basis:

Preparing a statement and considering
the other side's statement

£300

32) I order Gant AB to pay Gent Cosmetics LTD the sum of **£300**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one

days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of March 2026

**Beverley Hedley,
For the Registrar**