**O/0218/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 4154204**
**BY AIGNOSTICS GMBH**
**IN RESPECT OF THE TRADE MARK:**

# Atlas

**IN CLASS 9**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**
**UNDER NO. 453628**
**BY AENEAS GMBH & CO.KG**

## BACKGROUND AND PLEADINGS

1. On 30 January 2025, Aignostics GmbH ("the applicant") applied to register the trade mark shown on the cover page of this decision ("the contested mark") in the UK, claiming a priority date of 13 January 2025.[1] The application was published for opposition purposes on 7 March 2025, for goods and services in classes 9, 42 and 44. However, during the course of the proceedings, the specification was limited to goods in class 9 only, as set out in paragraph 20 of this decision.[2]

2. On 16 April 2025, Aeneas GmbH & Co.KG ("the opponent"), filed a notice of opposition. The fast track[3] opposition was brought under section 5(2)(a) of the Trade Marks Act 1994 ("the Act") and was directed at all of the goods and services in the application.

3. The opponent relies upon its United Kingdom trade mark (UKTM) no. 3648184, for the trade mark 'ATLAS', which was applied for on 27 May 2021, claiming a priority date of 22 November 2017.[4] The trade mark became registered on 10 December 2021. The opponent relies upon all of its goods and services in classes 5, 10, 42 and 44, for which the mark is registered, as set out in paragraph 20 of this decision.

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

5. The opponent claims that the marks are identical and that the goods and services covered by the marks are identical or highly similar, resulting in a risk of confusion and a likelihood of association between the marks.

[1] EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO)(EM) 019130260.
[2] Notwithstanding the limitation the opponent confirmed on 4 December 2025, that it wished to continue with the opposition.
[3] This opposition has been allocated a standard opposition number despite it being a fast track opposition.
[4] The earlier registration was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union relying on an earlier EU filing (017902982) of 18 May 2018, in turn claiming a priority from an earlier filed German trade mark application (3020170299303) of 22 November 2017.

6. The applicant filed a counterstatement admitting that the marks are identical. However, it denies that there exists a likelihood of confusion between the marks on the basis that the goods and services at issue are not similar.

7. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that rule 20(4) shall continue to apply. Rule 20(4) states that:

> "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

8. The net effect of the above is to require parties to seek leave in order to file evidence in fast-track oppositions. No leave was sought in respect of these proceedings.

9. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate costs; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

10. Only the applicant chose to file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

11. The applicant is represented by Barker Brettell LLP; the opponent is represented by Forresters IP LLP.

**DECISION**

12. 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.

**Section 5(2)(a)**

13. Section 5(2)(a) of the Act reads:

> "5(2) A trade mark shall not be registered if because-
>
> > (a) it is identical with an earlier 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."

14. 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;
>
> c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

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

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

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

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

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

i) mere association, in the strict sense that the later mark brings 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.

**Identity of the marks**

15. The opponent's mark is ATLAS; the applicant's mark is Atlas. The marks are clearly identical, as acknowledged by the applicant in its defence.

**Distinctive character of the earlier mark**

16. In *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV*, Case C-342/97, the Court of Justice of the European Union ("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 Alternberger* [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)."

17. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

18. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to the earlier mark. Consequently, I have only the inherent position to consider.

19. I bear in mind that whilst neither descriptive nor allusive of the goods or services at issue, the opponent's mark 'ATLAS' is a common English dictionary word meaning, inter alia, a bound collection of maps. Overall, I find that the mark has a medium degree of inherent distinctive character.

**Comparison of goods and services**

20. The goods and services to be compared are:

*The applicant's goods*

Class 9
Downloadable software using artificial intelligence and machine learning for providing and facilitating medical diagnosis, for managing and analysing medical data, and for managing data and physician and patient communications related to clinical trials, and for managing data and communications of scientific research, all of the foregoing for use in the fields of pathology; all of the aforesaid goods related to the fields of oncology, pathology and biopharmaceutical research; none of the aforesaid relating to the use of reagents or the testing of bodily fluids.

*The opponent's goods and services*

Class 5
Medical, chemical and biological test kits and test reagents for medical purposes, included in class 5; Antiserums for diagnostic purposes; Chemical reagents for medical diagnostic, medical or veterinary purposes; Medical or veterinary chemical test reagents; Diagnostic preparations for medical or veterinary purposes; Diagnostic preparations; Diagnostic preparations for medical, pharmaceutical or veterinary purposes; Diagnostic biomarker reagents for medical purposes; Diagnostic testing materials for medical use; Diagnostic reagents for medical use; Diagnostic substances

for medical use; Immunoassay reagents for medical or medical diagnostic purposes; In vitro diagnostic preparations for medical use; Indicators for medical diagnosis; Medical diagnostic test strips; Medical diagnostic reagents and assays for testing of body fluids; Medical diagnostic reagents; Preparations of microorganisms for medical or veterinary use; Preparations for detecting genetic predispositions for medical purposes; Preparations for detecting mutation in prion genes for medical purposes; Reagents for use in analysis [for veterinary purposes]; Reagents for analysis purposes (for medical diagnostic, medical or veterinary purposes); Reagents for use in diagnostic tests [for veterinary purposes]; Clinical diagnostic reagents; Reagents for in-vitro laboratory use [for veterinary purposes]; Reagents for in-vitro laboratory use [for medical purposes]; Reagents for blood grouping [for medical purposes]; Reagents for use with testing apparatus for medical or medical diagnostic purposes; Reagents for use in diagnostic tests or in analyses for medical purposes; Reagents for use with testing apparatus for medical diagnostic or veterinary purposes; Reactants for medical or veterinary diagnosis; Veterinary diagnostic reagents; Clinical medical reagents; Biological reagents for medical, medical diagnostic or veterinary purposes; Chemical reagents for medical, medical diagnostic or veterinary purposes; Chemical reagents for medical or veterinary purposes; Reagents for microbiological analysis, for medical or veterinary purposes; Genetic identity tests, consisting of reagents for medical purposes; Reagents and media for medical and veterinary diagnostic purposes; Reagents for medical use; Reagents for medical or veterinary genetic testing; Chemical preparations for use in dna analysis [medical]; Chemical preparations for medical or medical diagnostic purposes; Blood for medical or medical diagnostic purposes; Biological preparations for medical, medical diagnostic or veterinary purposes; Mixed biological preparations for medical or medical diagnostic purposes; Blood plasma; Blood components; Blood protein fractions; Enzymes for medical, medical diagnostic or veterinary purposes; Enzyme preparations for medical or veterinary purposes; By-products of the processing of cereals for medical or medical diagnostic purposes; Nucleic acid sequences for medical diagnostic, medical or veterinary purposes.

Class 10

Medical apparatus and instruments; Analysers for medical use; Diagnostic apparatus for medical purposes; Automated testing apparatus for bodily fluids, for medical or

medical diagnostic purposes; Diagnostic, examination, and monitoring equipment; Laser pointers for medical use; Laser beam delivery instruments for medical use; Medical instruments; Medical instruments incorporating lasers; Tools for medical diagnostics; Medical diagnostic apparatus for medical purposes; Medical and veterinary apparatus and instruments; Apparatus for carrying-out diagnostic tests for medical purposes; Apparatus for analysing images [for medical use]; Apparatus for DNA and RNA exams for medical purposes; Apparatus for analysing bacteria in biological samples [for medical use]; Capillary tubes for delivering reagents; Specimen cup holders; Laboratory apparatus for the transmission of liquids, for medical or medical diagnostic purposes; Laboratory apparatus for mixing liquids, for medical or medical diagnostic purposes; Laboratory apparatus for administering liquids, for medical or medical diagnostic purposes; Laboratory apparatus for thinning liquids, for medical or medical diagnostic purposes); Laboratory apparatus for incubating liquids, for medical or medical diagnostic purposes; Medical or immunological testing apparatus; Electronic analyzers for medical purposes; Photometric analyzers for medical use; Automatic analyzers for medical diagnosis; Body composition analyzers for medical purposes; Analysers for bacterial identification for medical purposes; Physical analyzers for medical use; Blood centrifuging tubules [for medical use]; Blood filters for extracorporeal use; Hypodermic needles; Medication injectors; Injectors for medical or medical diagnostic purposes.

Class 42

Laboratory services.

Class 44

Medical assistance; Medical services; Veterinary services; Medical analysis in connection with the treatment of individuals; Pharmaceutical advice; Advisory services relating to medical apparatus and instruments; Providing information relating to the rental of medical machines and apparatus; DNA screening for medical purposes; Medical diagnostic services; Medical testing services relating to the diagnosis and treatment of disease; Medical and health services relating to DNA, genetics and genetic testing; Pharmaceutical advice; Pharmacy advice; Consultancy for medical or medical diagnostic instruments; Consultancy in relation to immunology or autoimmunology; Consultancy and information relating to medical or medical

diagnostic products; Consultancy in relation to medical or medical diagnostic services; Medical analysis services for the diagnosis of cancer; Medical analysis for diagnosing autoimmune diseases; Medical laboratory services for the analysis of blood samples taken from patients; Medical laboratory services for the analysis of samples taken from patients; Medical analysis for the diagnosis and treatment of persons; Medical analysis services for cancer diagnosis and prognosis; Medical analysis for the diagnosis and prognosis of autoimmune diseases; Medical analysis services relating to the treatment of patients; Medical analysis services relating to the treatment of persons; Medical analysis services relating to the treatment of persons provided by a medical laboratory; RNA or DNA analysis for cancer diagnosis and prognosis; RNA and DNA analysis the diagnosis and prognosis of autoimmune diseases.

21. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the CJEU stated that:

> "23. In assessing the similarity of the goods or services concerned, … all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

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

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 OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

> "82. ...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers

may think that the responsibility for those goods lies with the same undertaking".

24. For the purposes of considering the issue of similarity of the goods and/or services, it is permissible to consider groups of terms collectively where appropriate: *Separode* Trade Mark, BL O-399-10.[5]

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

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

26. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, at [365].

27. Pursuant to section 60A of the Act, I am mindful of the fact that the goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes. I also note that in *Unicorn Studio Inc v Veronese* [2024] EWHC 1098 (Ch), Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense. Meanwhile, in *RALEIGH INTERNATIONAL Trade Mark* [2001] RPC 11, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, observed that when goods or services are not identical or self-evidently similar, the opposition should be supported by evidence as to their similarity.

[5] Paragraph 5.

28. With regards to the similarity of the goods and services, the applicant submits:[6]

> "The amended Class 9 Specification designates software. The Opponent's Mark does not cover software in class 9 or any form of software as a service in class 42. The goods are not identical.
>
> Software by its very nature is an intangible product. The Opponent's class 5 goods relate to test kits and reagents whilst the class 10 goods are medical apparatus and instruments. There is therefore a clear distinction between the Applicant's intangible goods and the Opponent's physical goods as to form, end purpose and method of use.
>
> The Opponent's services in class 42 are "Laboratory services". These services would naturally be understood to take place in a laboratory; […]. In contrast, the Amended Class 9 specification specifically references the software as "managing data and physician and patient communications related to clinical trials". This provides 2 points of distinction. Firstly, the end user of the Opponent's Services would likely be a scientist or lab technician, whereas the end user for the Applicant's Goods would be a physician and/ or patient. Secondly, "laboratory services" will occur in a lab, in a sterile environment under controlled conditions, this is in direct contrast to a "clinical trial" which is the use of a new medical drug in the real world.
>
> The Opponent has asserted all of the services in class 44 as being similar to the Opposed Mark. This is rejected, clearly not all services are similar, "veterinary services" and "pharmaceutical advice" being an example.
>
> For those services which relate to the "medical analysis in connection with the treatment of individuals" or "medical analysis services relating to the treatment of patients", even these broad services are distinguishable from the Applicant's amended goods. Whilst the Opponent's class 44 services and Amended class 9 goods both serve the medical field, and as discussed at the outset, the end

[6] Written submissions in lieu, dated 24 October 2025.

user will be sufficiently sophisticated to differentiate between the provision of software and the provision of physical goods or services. The nature, purpose, method of use, and channels of trade are different.

As such, we submit that the opposition should fail on the basis that the Applicant's Amended class 9 goods are sufficiently dissimilar from the Opponent's goods and services when making a global assessment."

29. It is noted that a comparison of the respective specifications was not provided by the opponent, other than submitting in its statement of grounds that the goods and services at issue are either identical or highly similar. Accordingly, taking guidance from Iain Purvis KC, sitting as Appointed Person in the *SmartX* trade mark decision,[7] as the opponent has not provided a comparison between the goods and services at issue, I will proceed to make my own, by comparing what I consider to be the core meaning of the goods and services, without affording them either a too liberal, or an artificially narrow, interpretation.

Downloadable software using artificial intelligence and machine learning for providing and facilitating medical diagnosis, for managing and analysing medical data, and for managing data and physician and patient communications related to clinical trials, and for managing data and communications of scientific research, all of the foregoing for use in the fields of pathology; all of the aforesaid goods related to the fields of oncology, pathology and biopharmaceutical research; none of the aforesaid relating to the use of reagents or the testing of bodily fluids

30. Whilst I acknowledge that the contested goods are not present in the specification of the opponent's earlier mark, I am of the view that the goods share a degree of similarity with some of the opponent's goods and services on the basis of complementarity.

[7] BL O/0911/24, at [32].

31. In regard to complementarity Thomas Mitcheson QC (as he then was), sitting as the Appointed Person, considered the level of similarity between *Computer software* and *Financial services* in *MFS Africa Trade Mark*, BL O/531/22. He said:

> "19. ... I have difficulty with the conclusion that there are no complementary elements, particularly in light of the Hearing Officer's earlier finding that computer software and mobile applications may be used to support the provision of financial services. As I have noted above, it is clearly the case that financial services can and often are provided using computer software, often of a bespoke nature. This seems to me to be a classic example of complementary goods and services whereby the nature of the software plays an integral and important part in the delivery of the financial services.
>
> …
>
> 21. ... I disagree with the conclusion that there are no similarities between computer software and mobile applications and the financial services in the Opponent's specification. The supportive/complementary nature of the former is apparent and that is sufficient in my mind to render the goods/services as having a low degree of similarity. As the Hearing Officer explained in relation to 'electronic payment apparatus' in §55, the average consumer might expect a single or related entity to offer both. This mainly arises because of the hugely broad nature of the Applicant's specification, which means that one form of computer software or another is likely to be similar to large swathes of goods and services in other classes, so ubiquitous is the use of computers and software in present day life. The solution to this is for applicants to be more specific in what they apply for, and to narrow down the classes of software to make it more difficult to allege that such software could be used to support or be complementary to other goods and services."

32. I am of the view that the contested downloadable software goods which are specifically for use in relation to providing and facilitating medical diagnosis, managing and analysing medical data, managing data and physician and patient communications related to clinical trials, and for managing data and communications

of scientific research, could feasibly include software that not only supports, but is essential for, the operation and provision of the opponent's following goods and services, on the basis that the nature of the software will play an integral and important role:

Class 10 Diagnostic apparatus for medical purposes; Diagnostic, examination, and monitoring equipment; Tools for medical diagnostics; Medical diagnostic apparatus for medical purposes; Medical apparatus and instruments; Apparatus for carrying-out diagnostic tests for medical purposes.

Class 44 Medical services; Medical diagnostic services; Medical analysis services relating to the treatment of patients.

33. As such, I find that there is a degree of complementarity between the contested goods and the opponent's above listed goods and services. For example, the applicant's *software for use in relation to providing and facilitating medical diagnosis* could play an essential, integral and important role in the opponent's *diagnostic, examination, and monitoring equipment* and its *medical diagnostic services,* etc. I remind myself that in *Kurt Hesse v OHIM,* the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. Accordingly, I am of the view that there is a low level of similarity between the contested goods and some of the opponent's goods and services in classes 10 and 44, as shown above.

34. For the avoidance of doubt, I do not consider the limitation to the applicant's specification (*all of the foregoing for use in the fields of pathology; all of the aforesaid goods related to the fields of oncology, pathology and biopharmaceutical research; none of the aforesaid relating to the use of reagents or the testing of bodily fluids)* to have any bearing on the outcome of my comparison of the parties' respective goods and services.

**The average consumer and the nature of the purchasing act**

35. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97.

36. 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."

37. The average consumer for the goods and services will be a professional user from within the medical/healthcare sector, or in the case of some of the services at issue, for example, medical services, will also include a member of the general public. Given the range of goods and services at issue, the price and frequency of purchase will vary depending on their nature and type. The average consumer is likely to consider various factors when selecting the goods and services, such as quality, suitability, functionality, price and compatibility, when for example, purchasing software that is complementary to the medical goods and services at issue. Furthermore, in the case of services, reputation of the service provider and specific knowledge of the subject matter are likely to be taken into account. Given that the goods and services at issue are health related, I consider that the average consumer will likely pay a high degree of attention during their purchase, given the role that they are intended to play and that they are directly concerned with the health and wellbeing of patients.

38. The average consumer is likely to select the goods by eye from pages of a catalogue or publication in the relevant field. The services will likely be selected following perusal of websites and advertisements. In all cases, the visual aspect of the mark will play a significant role during the purchasing process as consumers will see it on promotional material, websites, on packaging and on the goods themselves. However, I do not discount an aural component given that advice may be sought from medical professionals, medical representatives or other such advisors.

**Likelihood of confusion**

39. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa (*Canon* at [17]).

40. Earlier in this decision, I found that:

- The contested goods are similar to some of the opponent's goods and services to a low degree.

- The average consumer for the goods and services is a member of the general public or a professional user from within the medical/healthcare sector, who will pay a high degree of attention during the purchasing process.

- The purchasing process will be predominantly visual, although I do not discount an aural component to the purchase.

- The marks are identical.

- The earlier mark is inherently distinctive to a medium degree.

41. Whilst it is acknowledged that the high degree of attention paid is a factor in favour of the applicant, this, in my view, is counteracted by the fact that the marks are

identical, therefore there is nothing to assist the average consumer in distinguishing between them. Whilst I bear in mind that the contested goods are similar to only a low degree to some of the opponent's goods and services, I consider that the effect of the interdependency principle is such that there will still be confusion for these goods and services, as it is unlikely that the average consumer would attribute the use of such identical marks as a coincidence. Consequently, I consider there to be a likelihood of direct confusion.

**CONCLUSION**

42. The opposition has succeeded under section 5(2)(a). Subject to any successful appeal, the application will be refused in full.

**COSTS**

43. The opponent has succeeded and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £400, calculated as follows:

| | |
|---|---|
| Official fee: | £100 |
| Filing a notice of opposition and considering the applicant's counterstatement: | £300 |
| **Total:** | **£400** |

44. I therefore order Aignostics GmbH to pay Aeneas GmbH & Co.KG the sum of £400. 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 16th day of March 2026**

**Sam Congreve**
**For the Registrar**