BL O/0227/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

AND IN THE MATTER OF TRADE MARK APPLICATION NUMBER 3,890,434 IN THE NAME OF HIGH SPORT, LLC

AND IN THE MATTER OF OPPOSITION NUMBER 441,644 IN THE NAME OF HI-INT SA

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF STYLIANOS ALEXANDRIDIS (O/973/25) DATED 17 OCTOBER 2025

DECISION

Introduction

1. This is an appeal from the decision of Stylianos Alexandridis, for the Registrar, dated 17 October 2025 (O/973/25). Hi-Int SA unsuccessfully opposed the trade mark application of High Sport, LLC under section 5(2)(b) of the Trade Marks Act 1994, and it now appeals.

2. On 17 March 2023, High Sport, LLC filed an application for the word mark HIGH SPORT (No 3,890,434) for goods and services in Classes 9, 18, 25 and 35. Hi-Int SA opposed the application relying on two earlier marks.

3. The First Earlier Mark (No 800,918,526) is the following figurative mark:

4. The Second Earlier Mark (No 800,926,373) is for the word mark HIGH USE. Both earlier marks are more than five years old and so Hi-Inbt SA had to establish their use, which was established in relation to both marks for the following goods only:

> **Class 18**
> Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
>
> **Class 25**
> Clothing articles, footwear, headwear.

Standard of appeal

5. The standard of appeal is by way of review. Neither surprise at a Hearing Officer's conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer's findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and further explained in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49] and *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc* [2025] UKSC 25, [93] and [94].

6. When considering this appeal, and applying these principles, it is important to remember the high bar set.

Grounds of appeal

7. The Appellant filed narrative Grounds of Appeal, but did not make any further written or oral submissions. In substance, there are five grounds of appeal. First, the Appellant contends that the Hearing Officer did not consider the evidence it filed on the meaning of the word SPORT in the fashion industry. Secondly, it is contended that the Hearing Officer made inconsistent findings in relation to whether the mark had a unitary meaning. Thirdly, it is said that the Hearing Officer made inconsistent findings as to the impact of the stylisation of the First Earlier Mark. Fourthly, it is claimed the Hearing Officer erred by focussing on the differences between the marks rather than their common elements. Finally, the Appellant complains that the Hearing Officer erred by failing to find the word SPORT to be descriptive and non-distinctive.

Grounds 1 and 5: SPORT should have been taken to be descriptive

8. Before the registrar, the Appellant relied on two witness statements by Mr Alessandro Cavaleri. The second witness statement, the Appellant says, establishes that in the fashion industry the term SPORT is used widely and, in particular, it is used to describe a range or category of goods. The first ground of appeal is that the Hearing Officer overlooked, or did not give proper weight to, this statement. The fifth ground of appeal is that the Hearing Officer did not find the word SPORT to be descriptive. As the only basis upon which this finding could be made is Mr Cavaleri's second witness statement, the two grounds stand or fall together.

9. As a starting point, I remind myself of what the Supreme Court said in *Henderson v Foxworth Investments Limited* [2014] UKSC 41, [48]:

> …There is however no reason to suppose that this passage in the evidence was overlooked, merely because it was not expressly mentioned. An appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration…

10. Accordingly, even if the Hearing Officer did not explicitly mention the evidence, I am to assume (absent compelling reasons) that it was considered. In this case, however, the Hearing Officer did mention the second witness statement (Decision, [8]) and, I must assume, read it. Further, the Hearing Officer specifically made a finding which appears to have taken this evidence into account because he found the word element "SPORT" to be "highly allusive" for certain goods (Decision, [72]). It appears, therefore, that the Hearing Officer accepted that the term SPORT is widely used in fashion, but not (as the Appellant contended) that it is descriptive.

11. Therefore, the Hearing Officer did consider the second witness statement of Mr Cavaleir and, it appears, he even took it into account in making the relevant findings. I therefore reject the suggestion that the evidence was overlooked. The subsidiary submission that insufficient weight was given to the evidence is a very high hurdle to overcome on appeal (see, for instance, *Le Patourel v BT Group PLC* [2025] EWCA Civ 1061, [50]). The only basis put forward for this submission seems to be little more than the Hearing Officer reached a conclusion with which the Appellant did not agree. This is not sufficient to disturb the finding of the Hearing Officer on this point.

12. Accordingly, I dismiss the first and fifth grounds of appeal.

Ground 2: Whether the mark has a unitary meaning

13. In considering whether the words in the mark HIGH SPORTS formed a unitary whole the Hearing Officer said at [72]:

> …it is my view that the words do not form a unit in this case. This is because the average consumer will be unable to clearly extract a unified concept from the mark as a whole. I also consider that the second word element "SPORT" will be seen as being at least highly allusive for some of the goods in Class 25. Therefore, the word element "HIGH" will play a greater role in the overall impression as opposed to the word "SPORT", which will have a lesser role.

14. It was reiterated at [76] that the mark HIGH SPORT would not be seen as forming a unit. The Appellant suggests these two findings are inconsistent with the statement by the Hearing Officer that the "average consumer will recall the marks as a whole" (at [95]). I disagree.

15. It is trite law that the comparison of the marks must be global based on the overall impression given by the marks (that is "as a whole") (it having been established in C-251/95 *Sabel v Puma* [1997] ECR I-6214, [22]-[23]). Accordingly, I see nothing inconsistent between the Hearing Officer's finding that the two words in the mark do not have a unitary meaning and his comparison of the marks being undertaken globally.

16. I therefore reject the second ground of appeal.

Ground 3: The impact of the stylisation in the First Earlier Mark

17. The Appellant highlights the finding by the Hearing Officer that the word in the First Earlier Mark would be seen as "HIGH" ([70]). In the same paragraph, the Hearing Officer finds that the stylisation of the mark will be seen as part of the mark (and not decoration) and that it will have a significant impact on the overall impression.

18. It is suggested by the Appellant that the Hearing Officer was inconsistent when he found (at [94]) that the "striking" stylisation in the First Earlier Mark plays an "important and distinctive role", and so the First Earlier Mark would not be directly confused with the mark HIGH SPORTS.

19. It is clear that stylisation alone can give distinctiveness to otherwise descriptive marks (see for instance, *Nicoventures Holdings Ltd v The London Vape Company Ltd* [2017] EWHC 3393 (Ch)). It is also the case that word marks are protected in all typefaces and fonts (see for instance, T-24/17 *La Superquimica v EUIPO*, EU:T:2018:668, [39]). Nevertheless, it is inappropriate to hypothesise a way of styling HIGH SPORTS so as to be as close as possible to the stylisation of the First Earlier Mark: see *MR HERON* (O/954/22), [42]. This is because the stylisation is not part of the HIGH SPORTS mark.

20. It is apparent, therefore, that the approach of the Hearing Officer is entirely appropriate and indeed consistent with his initial finding (in [70]). Indeed, the Appellant's challenge is almost entirely predicated on a selective reading of that paragraph and, in particular, ignoring the Hearing Officer's finding on the significance of the stylisation; a finding that directly supports his conclusion on direct confusion.

21. I therefore reject this ground of appeal.

Ground 4: Focusing on differences rather than common elements

22. The Appellant challenges the Hearing Officer's finding that there would be no indirect confusion, in particular it says that the HIGH element, which was common between the marks, was not given enough weight in the assessment when the different element SPORT was found to play a lesser role.

23. There are three aspects to this challenge. The first is that the Hearing Officer ignored the principle that consumers normally give more weight to the beginning of marks (T-183/02 and T-184/02 *El Corte Inglés SA* [2004] ECR II-968. This argument fails because the Hearing Officer explicitly considered this rule and cited this case (see [77] and footnote 20). The second is that the conceptual differences the Hearing Officer found do not neutralise visual and aural similarities (T-460/07 *Nokia Oyj v OHIM* [2010] ECR II-92, [66]). I also reject this suggestion as, once more, it appears contrary to what was actually found by the Hearing Officer. He found that the marks were conceptually similar to between a medium and high degree ([76]) and at no point suggested any neutralisation.

24. The final aspect of this challenge is based on the claim that the element HIGH has independent distinctive character in the mark HIGH SPORTS. The Appellant suggests that *Whyte and Mackay Ltd v Origin Wine UK Ltd* [2015] EWHC 1271 (Ch) should have been applied by the Hearing Officer. Once more, the basis of this challenge is surprising because the Hearing Officer did refer to and extract this case ([90]) and, in any event, there was no finding that the word HIGH had independent distinctive character (which is different from elements of marks being considered individually). Furthermore, the rule from C-120/04 *Medion* [2005] ECR I-8565 is largely (if not entirely) encapsulated within the concept of indirect confusion (see *LA SUGAR* (O/375/10), [17(a)]), which was considered at length by the Hearing Officer.

25. I therefore find all three of the complaints under this ground to be baseless. And I reject the fourth ground of appeal.

Conclusion

26. I therefore dismiss the appeal in its entirety.

Costs

27. Ms Blythe, for the Respondent, sought off-scale costs on the basis that the Appellant had failed to identify any distinct or material errors of principle. Central to her application was the Appellant's filing of narrative grounds of appeal but then playing no further role in the appeal.

28. Ms Blythe said it was unreasonable for the Appellant to adopt this approach because it led to the Respondent incurring additional costs. I disagree. The Appellant's course of action does not in itself lead to increased costs being incurred by the Respondent when compared to the costs that would have been incurred had the Appellant taken an active role in proceedings. Therefore, I do not think this conduct can be considered unreasonable on this basis. In this respect, while not strictly relevant, I accept Ms Blythe's submission that even in cases where the appeal looks hopeless and it is clear the appellant is not attending a hearing, it can still be appropriate for a respondent to attend a hearing and even to instruct counsel to appear.

29. Finally, if the award of off-scale costs were being considered against an absent party then it would be necessary to give notice to that party that an award was a possibility so that they can be given an opportunity to be heard. No such notice has been given to the Respondent.

30. I therefore decline to award off-scale costs, rather I order the Appellant to pay to the Respondent a contribution towards its costs of £3,500, which is to be paid by 4pm on 1 April 2026.

PHILLIP JOHNSON
THE APPOINTED PERSON
17 March 2026

Representation:
For the Appellant: Written grounds of appeal by Wynne-Jones IP Limited
For the Respondent: Ms Charlotte Blythe (instructed by Edwin Coe LLP)