

O/0242/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00004104451
BY NOVA AURA LTD TO REGISTER:**

Nova Cosmetics

AS A TRADE MARK IN CLASS 3

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 451639 BY
CAMBRIUM GMBH**

BACKGROUND AND PLEADINGS

1. On 25 September 2024, nova aura ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the applicant’s mark”). The applicant’s mark was published on 1 November 2024 and registration is sought for the following goods:

Class 3: Moisturising gels [cosmetic]; Artificial nails for cosmetic purposes; Moisturising skin lotions [cosmetic]; Cosmetics; Sun creams [for cosmetic use]; Creams (Cosmetic -); Cosmetic creams; Cosmetics and cosmetic preparations; Sunscreens [for cosmetic use]; Cosmetic moisturisers; Cosmetic soaps; Sunscreen [for cosmetic use]; Cosmetic facial lotions; Facial lotions [cosmetic]; Cosmetic soap; Lotions for cosmetic purposes; Cosmetic masks; Facial creams [cosmetic]; Facial creams [for cosmetic use]; Cosmetic powder; Cosmetic oils; Cosmetic preparations; Anti-aging creams [for cosmetic use]; Facial cleansers [cosmetic]; Cosmetic pencils; Pencils (Cosmetic -); Cosmetic kits; Kits (Cosmetic -); Anti-ageing creams [for cosmetic use]; Facial moisturisers [cosmetic]; Anti-wrinkle creams [for cosmetic use]; Cosmetic skin fresheners; Lacquer for cosmetic purposes; Skin creams [for cosmetic use]; Cosmetic creams for the skin; Skin creams [cosmetic]; Pro-collagen for cosmetic purposes; Facial cream [for cosmetic use]; Serums for cosmetic purposes; Skin cleansers [cosmetic]; Skin balms [cosmetic]; Cosmetic skin enhancers; Cosmetic tanning preparations; Collagen for cosmetic purposes; Cleansing creams [cosmetic]; Cosmetic hair lotions; Facial scrubs [cosmetic]; Cosmetic rouges; Self-tanning preparations [cosmetic]; Facial toners [cosmetic]; Lip coatings [cosmetic]; Skin cream [for cosmetic use]; Pomades for cosmetic purposes; Skin whitening preparations [cosmetic]; Anti-wrinkle

cream [for cosmetic use]; Suncare lotions [for cosmetic use]; Anti-ageing serums for cosmetic purposes; After-sun lotions [for cosmetic use]; Toning creams [cosmetic]; Cosmetic creams and lotions; Adhesives for cosmetic purposes; Cosmetic sun-protecting preparations; Astringents for cosmetic purposes; Glitter for cosmetic purposes; Facial masks [cosmetic]; Cosmetic facial masks; Sunscreen creams [for cosmetic use]; Cosmetic sunscreen preparations; Acne cleansers, cosmetic; Toners for cosmetic purposes; Cosmetic facial packs; Facial packs [cosmetic]; Facial washes [cosmetic]; Lip stains for cosmetic purposes; Skin care lotions [cosmetic]; Cosmetic nail preparations; Cosmetic massage creams; Geraniol for cosmetic purposes; Cosmetic suntan lotions; Cosmetic suntan preparations; Cosmetic hand creams; Retinol cream for cosmetic purposes; Oils for cosmetic purposes; Eyelashes (Cosmetic preparations for -); Cosmetic preparations for eyelashes; Skin toners [cosmetic]; Skin care creams [cosmetic]; Cosmetic creams for skin care; Skin hydrators for cosmetic purposes; Cosmetic products for the shower; Procollagen for cosmetic purposes; Pencils for cosmetic purposes; Cosmetic eye gels; Hair care creams [for cosmetic use]; Hair care lotions [for cosmetic use]; Gels for cosmetic purposes; Cosmetic sun-tanning preparations; Exfoliating scrubs for cosmetic purposes; Tooth powders [for cosmetic use]; Hair tonics [for cosmetic use]; Self tanning creams [cosmetic]; Cosmetic preparations for slimming purposes; Slimming purposes (Cosmetic preparations for -); Cosmetic nourishing creams; Cosmetic preparations for skin care; Skin care (Cosmetic preparations for -); Skin conditioning creams for cosmetic purposes; Ointments for cosmetic use; Self tanning lotions [cosmetic]; Suntan oils for cosmetic purposes; Softening cleanser [cosmetic]; Cotton for cosmetic purposes; Moisturising

concentrates [cosmetic]; Cosmetic face powders; Face powders [for cosmetic use]; Cosmetic eye pencils; Lint for cosmetic purposes.

2. On 27 December 2024, the applicant's mark was opposed by Cambrium GmbH ("the opponent"). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act") and is reliant upon the following trade mark:

NOVACOLL

International Registration designating the UK under no. WO0000001751290

International Registration date: 17 August 2023

Date protection conferred in the UK: 25 January 2024

Priority date: 1 March 2023 (EUIPO)

Relying on all goods, namely:

Class 1: Chemicals based on bioactive proteins for use in the manufacture of cosmetics and skin care products; active chemical ingredients based on bioactive proteins for use in the manufacture of cosmetics and skin care products; biological preparations based on bioactive proteins for use in the manufacture of cosmetics and skin care products; all aforementioned goods excluding micellar formulations; specifically excluding micellar solubilisates.

Class 3: Non-medicated cosmetic products and skin care products based on bioactive proteins; all aforementioned goods excluding micellar formulations; specifically excluding micellar solubilisates.

("the opponent's mark").

3. The basis for the opponent's claim is that marks at issue are highly similar and that the goods at issue are either identical or similar. As such, the opponent's position

is that there exists a likelihood of confusion on the part of the public, which includes a likelihood of association.

4. The applicant filed a counterstatement wherein it denied the claims against it. It is noted that the applicant sought to request that the opponent provide proof of use for the mark relied upon. However, while the opponent's mark is an earlier mark in accordance with section 6 of the Act, it was not registered for more than five years prior to the filing date of the applicant's mark. As a result, it is not subject to the use provisions set out in section 6A of the Act.
5. The opponent is represented by Kilburn & Strode LLP and the applicant is not legally represented. Neither party filed evidence in these proceedings. No hearing was requested and only the opponent filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.
6. 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.

PRELIMINARY INDICATION

7. It is noted that, in the present case, the Tribunal considered it appropriate to issue a preliminary indication in accordance Rule 19 of the Trade Marks Rules 2008. This was issued to the parties on 19 March 2025 and I can confirm that it was given by a Hearing Officer other than myself. Whilst I note the presence of this correspondence on the Tribunal's file, I have not given it any consideration. Even if I did, it is no way binding upon me and has no influence upon my decision, which

will be made based on my own considerations of the various assessments I must make throughout. As a result, I will say no more about the preliminary indication.

DECISION

Section 5(2)(b): legislation and case law

8. Section 5(2)(b) of the Act reads as follows:

“(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 or association with the earlier trade mark.”

9. 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.”

10. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

[...]

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

11. 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

12. The applicant's goods are set out at paragraph 1 above whereas the opponent's are set out at paragraph 2.

13. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"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".

14. 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.

15. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court 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 fur 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.”

16. The applicant's counterstatement sets out that its mark is used exclusively for cosmetic products such as pimple patches, eyelash serums and face masks. It claims that these products are not pharmaceutical in nature and are, instead, over the counter beauty solutions targeted at skincare enhancement. As for the opponent's goods, the applicant states that they can be inferred to be pharmaceutical or collagen based goods due to the name 'NOVACOLL'. It is claimed that these types of goods are entirely distinct. While these points are noted, they have no bearing on the assessment I am required to make. This is because, when considering the likelihood of confusion under section 5(2)(b) of the Act, the assessment must be based on the concept of 'notional and fair use' which

involves carrying out the comparison of the goods based on the specifications before me, not the goods effectively provided by the parties.¹

17. In considering the terms of the applicant, they include a range of goods that are expressly referred to as different types of cosmetics. The opponent's specification, whilst including class 1 goods, includes the term "non-medicated cosmetic products and skin care products based on bioactive proteins" in class 3.² This term is further limited in that it expressly excludes the use of micellar formulations, specifically micellar solubilisates.

18. While the limitations to the opponent's term are noted, it can still cover a wide range of cosmetics so long as they can be said to be based on bioactive proteins and do not include micellar formulations. It is my understanding that bioactive proteins are naturally occurring compounds that are used in cosmetics to protect the skin/hair, repair and hydrate the skin/hair and promote anti-aging benefits of the skin.³ As for the exclusion of micellar formulations, it is my understanding that this means that none of the opponent's goods can be said to include micellar as an ingredient. While I appreciate that micellar is a common ingredient in skin cleansing or make-up removal products, the exclusion of this as an ingredient does not prevent the opponent's term from covering goods that are used to cleanse or to remove make-up. Instead, this limitation simply indicates that this ingredient cannot be included.

19. The fact that the opponent's goods are based on bioactive proteins means that they are not capable of covering some of the applicant's goods, such as:

¹ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

² It is this term that will form the sole basis of my comparison.

³ Given that cosmetics in class 3 can cover those applied to improve the appearance of the teeth (see one of the terms in the applicant's specification that expressly covers cosmetics for teeth as an example of such a term. Therefore, I see no reason why bioactive proteins cannot be used to protect and repair the teeth and/or gums.

“Artificial nails for cosmetic purposes; cosmetic pencils; pencils (cosmetic -); adhesives for cosmetic purposes; pencils for cosmetic purposes; cosmetic eye pencils; cotton for cosmetic purposes; lint for cosmetic purposes.”

20. This is because the above goods are, as far as I understand them, not likely to be applied to the skin so as to benefit from bioactive proteins. All of the other goods of the applicant, however, are sufficiently broad so as to cover cosmetics that can include bioactive proteins to protect, repair or hydrate the skin, hair or teeth. Further, none of them expressly state that they include micellar as an ingredient so are also sufficiently broad to cover goods made without it. Therefore, I find that, save for the terms listed above, the applicant’s goods all fall within the opponent’s term meaning that they are identical under the principle outlined in *Meric*.

21. Alternatively, if I am wrong to reach the above finding of identity because the applicant’s goods cannot be said to be based on bioactive proteins, then they are similar to a high degree. This is on the basis that, as a broad range of cosmetic goods, their natures, methods of use and purpose all overlap. Further, I consider that producers of cosmetics with bioactive proteins are also likely to provide cosmetics without bioactive proteins. Further, the goods are likely to be found in close proximity in retail environments. The user is likely to overlap in that someone looking to use ‘cosmetic soap’, for example, may also seek some other cosmetic product with bioactive proteins in order to protect, repair or hydrate their skin. In terms of competition, I consider it reasonable to suggest that users looking for cosmetics may choose those that include bioactive proteins over those that do not, or vice versa.

22. I return now to the applicant’s goods that I have listed at paragraph 19 above. I will deal with these whilst utilising appropriate groupings, beginning with “artificial nails for cosmetic purposes” and “adhesives for cosmetic purposes”. While used for cosmetic purposes, they differ in nature and method of use with the opponent’s goods. The end purpose of these goods can be said to align to some degree in

that the ultimate aim of both parties' goods is to improve the user's look from a cosmetic perspective. For the avoidance of doubt, I consider that this overlap is somewhat limited because the core purpose of the applicant's goods differs from cosmetics based on bioactive proteins, which I would expect to offer more long term skincare benefits. In respect of trade channels, I am of the view that companies offering cosmetics will offer a wide range of different types of products. While these goods may not be found in close proximity to each other, they are likely to be found in the same sections of physical or online stores. Lastly, the user overlaps as I consider it reasonable to suggest that someone looking for artificial nails and adhesive to adhere those to their fingers are also likely to be the users of the opponent's goods. Overall, I consider that these overlaps are sufficient to give rise to a finding that these goods are similar to between a low and medium degree.

23. The applicant's terms of "cotton for cosmetic purposes" and "lint for cosmetic purposes" cover goods that are used to apply or remove cosmetic products from the user's skin. Plainly, these goods differ in nature and method of use from the opponent's goods. As for their purpose, they are expressly confirmed as being for cosmetic purposes so there can be said to be some overlap there, though I appreciate that this is not overly pronounced because the purpose of the applicants goods is to apply or remove cosmetics as opposed to being cosmetics themselves. The applicant's goods can be used with any type of cosmetic, including those based on bioactive proteins. As such, I find that these goods are important to one another and I am of the view that this relationship is such that consumers are likely to believe that they are the responsibility of a single undertaking.⁴ Further, I find that these goods are likely to share trade channels as they will be offered by the same undertakings and will also be found within close proximity of one another in retail environments. Lastly, the user will overlap. Overall, I consider that these goods are similar to a medium degree.

⁴ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

24. I am of the view that while the term “cosmetic pencils”, “pencils (cosmetic -)”, “pencils for cosmetic purposes” and “cosmetic eye pencils” cannot be said to be cosmetics based on bioactive proteins, they are still similar to the opponent’s term. This is on the basis that while their natures and method of use may differ, there is a degree of overlap in purpose. I say this because whilst a pencil for cosmetic purposes may not include creams with bioactive proteins, it is something that is applied to the skin in order to improve its look. Having said that, the overlap is not overly pronounced due to the fact that the applicant’s goods are likely to offer short term benefits whereas the opponent’s product is likely to offer more long term benefits. Further, I consider that there is an overlap in trade channels and user for similar reasons to those I have already discussed above. Overall, I consider that these goods are similar to between a low and medium degree.

The average consumer and the nature of the purchasing act

25. 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.

26. 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.

27. While the goods at issue will mostly be selected by members of the general public, they will also be sought by members of the trade who will use the goods for the provision of services (such as beauticians, for example). The goods are selected fairly frequently and are most likely to be obtained by self-selection from the shelf of retailers such as supermarkets or beauty salons, or from the pages of a website. As such, visual considerations are likely to dominate the selection process. However, the selection of the goods (for members of the public) could also require

the intervention of a sales assistant and the goods could be discussed with beauticians, so aural considerations must not be discounted.

28. The goods at issue are likely to range in cost from inexpensive items such as cotton for cosmetic purposes to relatively expensive anti-aging creams. As for the level of attention paid, this will vary depending on what is being selected. For example, goods such as cotton for cosmetic purposes are likely to be casual purchases that attract a lower degree of attention whereas other cosmetic goods such as creams will attract a medium degree of attention. This is because, for the latter goods, consumers will consider such factors like suitability, ingredients used as well as ethical considerations such as sustainability.

Comparison of the marks

29. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

30. 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.”

31. It would be wrong, therefore, to artificially dissect the trade marks, 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.

32. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
NOVACOLL	Nova Cosmetics

33. I have submissions from the opponent and comments from the applicant in its counterstatement. I do not intend to discuss these in full here but will discuss them where necessary below. For the avoidance of doubt, I can confirm that I have given them due consideration in making the following comparison.

Overall impression

34. The applicant's mark is a word only mark that consists of two words, being 'Nova Cosmetics'. The applicant argues that the inclusion of the word 'Cosmetics' is significant as it is descriptive and essential in defining the purpose of its goods. While these comments are noted, they are misguided. When considering an overall impression of a trade mark, it is not appropriate to dissect them but, as set out above, it is necessary to analyse each element of a mark and attribute it its relative weight. Where a word is purely descriptive, it is given very little weight from a trade mark perspective. That is the case here and, as such, I find that it is the word 'Nova' that plays the greater role in the applicant's mark, with 'Cosmetics' playing a much lesser role due to its purely descriptive nature.

35. The opponent's mark is a word only mark consisting solely of the word 'NOVACOLL'. As I find NOVA to be an identifiable word, I find that the opponent's

mark will, by a significant proportion of average consumers,⁵ be viewed as two elements, being 'NOVA' and 'COLL', conjoined as one word. I reach this finding because it is well-established that although consumers normally perceive a mark as a whole and do not proceed to analyse its various details, when perceiving a verbal sign, they will break it down into elements which, for them, have a real meaning or which resemble words known to them.⁶ For reasons that I will come to discuss below, I find that the element 'NOVA' will be attributed the greater role within the opponent's mark, with 'COLL', playing a lesser role.

Visual comparison

36. Visually, the marks share their first four letters, being 'NOVA'. These letters form the entirety of the dominant element of both marks. Therefore, this acts as a considerable point of similarity between them. Additionally, while the second elements in the parties' marks, being 'COLL' in the opponent's and 'Cosmetics' in the applicant's, are different overall, they do share their first two letters, being 'CO'. I appreciate that there are points of difference between the marks, being 'LL' at the end of the opponent's mark and 'SMETICS' at the end of the applicant's. However, I am of the view that the overall impression of the marks together with the principle that beginnings of marks tend to have more visual impacts than their ends⁷ are such to lead me to conclude that the marks are visually similar to between a medium and high degree.

Aural comparison

37. Aurally, the opponent's mark consists of three syllables that will be pronounced as 'NO-VAH-COLL'. The applicant's mark consists of five syllables that will be

⁵ I will focus on these consumers going forward because this represents the opponent's best case. Further, I remind myself that, as per the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, if these consumers are confused, then I am entitled to conclude that there exists a likelihood of confusion. While this principle was laid down in an infringement case, it equally applies to opposition under section 5(2) of the Act.

⁶ See *Mundipharma v OHIM — Altana Pharma (RESPICUR)*, T-256/04 T-256/04, paragraph 57

⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

pronounced in the ordinary way. The first two syllables of the marks are identical. As for their third syllables, they share a degree of similarity due to the pronunciation of the letters 'C-O'. The remainder of the aural components of the marks differ. Again, bearing in mind the overall impression of the marks and the fact that their beginnings are identical, I find that the marks are aurally similar to between a medium and high degree.

Conceptual comparison

38. The concept of the applicant's mark lies in the words 'Nova Cosmetics'. When viewed in combination, these words do not join to form any unitary meaning. Further, neither word qualifies the other. As such, the concept of the mark will lie in the meanings associated with the individual words themselves. 'Nova' is a dictionary word that means "a type of star that shines much more brightly for a few months as a result of a nuclear explosion."⁸ I appreciate that this meaning may not necessarily be understood in line with this exact meaning. However, the consumer will understand it as a reference to a star or an event in the cosmos. Therefore, it remains a readily identifiable word in the English language. As for 'Cosmetics', this is directly descriptive of the goods in the applicant's specification. While it will play a role in the overall concept of the mark as a whole, its impact is slight.

39. Turning to the opponent's mark, I have set out above that this will be viewed as two conjoined elements being 'NOVA COLL'. I find that the 'NOVA' element will be attributed the same meaning as set out in the preceding paragraph. As for the 'COLL' element, I note that the applicant states that this likely indicates a reference to 'collagen'. I agree with the applicant to some extent and find that while not all consumers will see 'COLL' in this way, a significant proportion of consumers will. In further support of this finding, I refer to paragraph 32 of *LIGHT VITAMIN* (BL O/1174/25) wherein Mr Thomas Mitcheson KC, sitting as the Appointed Person,

⁸ <https://dictionary.cambridge.org/dictionary/english/nova>

set out that an assessor should normally consider if the goods have a potential effect on conceptual meaning as a result of any link or allusion between the mark and the goods. In the present case, I accept that the nature of the opponent's goods in class 3 (being those relevant here) are such that they will have a potential effect on the meaning associated with 'COLL'. As a result, I find that the 'COLL' element, whilst not being directly descriptive, is allusive to the goods at issue. In considering the concept of this mark as a whole, I find that it will, like the applicant's mark, lie in the meanings associated with the individual elements themselves. Much like the word 'Cosmetics' in the applicant's mark, 'COLL's' impact will be slight.

40. Taking the concepts of the marks into account and the dominant impact that the word 'Nova' has in both, I find that the marks are conceptually similar to a high degree.

Distinctive character of the opponent's mark

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

42. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced through use; however, I note that the opponent has not filed any evidence of use meaning that I only have the inherent position to consider.

43. As set out above, the opponent’s mark will be viewed as the conjoining of two elements, being ‘NOVA’ and ‘COLL’. ‘NOVA’ will be understood as a reference to an ordinary dictionary word that, whilst not descriptive or allusive of the goods relied upon, is not particularly remarkable either. As for ‘COLL’, I accept that this will be understood as being allusive to the fact that the opponent’s goods contain collagen, even where this may not necessarily be the case. As such, I do not consider that the ‘COLL’ element will contribute to the distinctiveness of the mark to any material degree beyond that created by ‘NOVA’. Overall, I find that the opponent’s mark enjoys a medium degree of inherent distinctiveness.

Likelihood of confusion

44. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings

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

45. I have found the goods at issue to be identical or similar to varying degrees, including low to medium. The average consumer base is formed of members of the general public and of the trade who will select the goods via primarily visual means (though not discounting an aural component) whilst paying either a lower or a medium degree of attention. In respect of the similarity of the marks, I have found them to be visually and aurally similar to between a medium to high degree and conceptually similar to a high degree. Lastly, I found the opponent's mark to be inherently distinctive to a medium degree.

46. Taking all of the above factors into account and bearing in mind the principle of imperfect recollection, I am of the view that the marks at issue will be misremembered or inaccurately recalled for one another. Given the descriptive or allusive nature of the second elements within the marks (being 'Cosmetics' and 'COLL'), I find that it is the initial and dominant 'NOVA' element of each mark upon which the consumer will pin their recollection of the mark. This is particularly the case given that the marks will be viewed on goods that are relatively ordinary purchases that will not attract a higher degree of attention. Consequently, I find that there exists a likelihood of direct confusion between these marks. For the avoidance of doubt, I consider that the identity of the dominant 'NOVA' element

together with the higher degree of overall similarity between the marks means that this finding applies even when the marks are viewed on goods that are only similar to between a low and medium degree.

47. For the sake of completeness, I will proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

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

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

(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)".

48. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

49. In the event that consumers are able to accurately recall the marks for one another, I am of the view that the differences between them are such that the consumer would simply believe that they were different marks originating from the same or economically connected undertakings. I say this because the shared 'NOVA' element would be viewed as the indicator of origin for both marks. I accept that this is not high in distinctive character, however, I see no reason why consumers would believe the common use of 'NOVA' would be a coincidence. Taking this into account together with the fact that the points of difference are references to 'Cosmetics' and collagen (though 'COLL'), I find that the differences would simply be viewed as logical indicators of a sub-brand or brand extension. For example, the removal of 'Cosmetics' in the applicant's mark and the addition of 'COLL' after the word 'NOVA' in the opponent's will be viewed as logical differences that point to the fact that the 'NOVA' cosmetic brand has created an extension or sub-brand that produces and sells cosmetic goods that include collagen. On this point, I appreciate that this scenario would indicate that it was the applicant's mark that was the reference to the main brand. On this point, see paragraph 75 to 84 of *Comic Enterprises* (cited above at footnote 5) wherein Kitchin LJ explained that 'right way round' or 'wrong way round' confusion may be a consequence of nothing

more meaningful than the order in which the consumer happened to come across the marks. He explains further that in both instances, the consumer thinks that the goods at issue come from the same undertaking or economically linked undertakings, and they may be equally damaging to the distinctiveness and functions of the mark.

50. Taking the above into account, I find that there exists a likelihood of indirect confusion between the marks at issue. As was the case above, I find that this applies regardless of the level of similarity between the goods upon which the marks are viewed. Again, this is due to the identity of the 'NOVA' element and the higher degree of similarities between the marks as wholes.

Final remarks

51. Even though the applicant itself accepted that 'COLL' in the opponent's mark would be understood as a reference to 'collagen', I consider it necessary to discuss the fact that even if this were not the case, confusion would arise in any event. I say this because even if 'COLL' was viewed as an element with no obvious meaning, consumers would still identify 'NOVA' within the mark. Despite 'COLL' being more distinctive in this scenario (as it would not be allusive), I consider that the 'NOVA' element would remain the indicator of origin for the opponent's mark. So while 'COLL' may not necessarily allude to collagen-related goods, the addition of 'Cosmetics' to the shared 'NOVA' element would still indicate a sub-brand or brand extension that consumers would believe originated from the same or economically linked undertaking to that of the opponent. Again, this applies regardless of the level of similarity between the goods at issue.

CONCLUSION

52. The opposition succeeds in its entirety and the applicant's mark is, subject to any successful appeal of my decision, hereby refused registration for all of the goods applied for.

COSTS

53. The opponent has succeeded in opposing the application. It is, therefore, 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 £700 as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition and considering a counterstatement:	£250
Filing submissions in lieu:	£350
Official fees:	£100
Total:	£700

54. I hereby order nova aura ltd to pay Cambrium GmbH the sum of £700. The above sum should 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 23rd day of March 2026

A COOPER
For the Registrar