O/0248/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 4196174 BY LEMON APPEAL LTD TO REGISTER AS A TRADE MARK:

LEMON APPEAL

IN CLASSES 3, 4, 5, 8, 14, 16, 21, 24, 25, 29, 30, 31, 32, 33, 35, 39, 40 AND 41

AND

OPPOSITION THERETO UNDER NO. 600003704 BY LEMON CLINICA SL

Background & Pleadings

1. Lemon Appeal Ltd ("the applicant"), applied to register the trade mark shown on the front page of this decision in the United Kingdom. The application was filed on 29 April 2025 and was published on 13 June 2025 in respect of various goods and services.

2. On 13 June 2025, Lemon Clinica SL ("the opponent") opposed (using the Fast Track provisions) the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act")[1]. In its submissions, the opponent limited the opposition against the contested goods in Classes 3, 5, and 32.[2] The opponent is the proprietor of the UK registration number 04127825 for the following mark:

Lemon
BEAUTY

3. The mark was filed on 21 November 2024 and registered on 21 February 2025. For the purposes of this partial opposition, the opponent relies on all its goods and services as shown in paragraph 20 of this decision.

4. Under Section 6(1) of the Act, the opponent's mark clearly qualifies as an earlier trade mark. Further, as the registration of the opponent's mark was completed less than five years before the filing date of the contested mark,

[1] 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.

[2] With the Form TM7, the opponent initially opposed all the goods and services in the application. However, in its submissions, it explicitly stated that the opposition is withdrawn against the contested goods and services in Classes 4, 8, 14, 16, 21, 24, 25, 29, 30, 31, 33, 35, 39, 40, and 41.

proof of use is not relevant in these proceedings as per Section 6A of the Act.

5. The applicant filed a defence admitting that the competing Class 3 goods are identical or similar. However, it denied that the rest of the goods and services are similar or identical and that the marks are similar.

6. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 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."

7. The net effect of these changes is to require the parties to seek leave in order to file evidence in Fast Track oppositions. No leave was sought to file any evidence in respect of these proceedings.

8. 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 cost; otherwise, written arguments will be taken.

9. A hearing was neither requested nor was it considered necessary. Only the opponent filed written submissions in lieu of a hearing, which will not be summarised but will be referred to as and where appropriate during this decision. This decision has been taken following a careful consideration of the papers.

10. In these proceedings, the opponent is represented by Marcelo Barreneche, and the applicant by Elkington and Fife LLP.

Decision

Section 5(2)(b)

11. Section 5(2)(b) of the Act states:

> "A trade mark shall not be registered if because-
>
> […]
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

12. Section 5A states:

> "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."

13. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream 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 & Services

14. Section 60A of the Act provides:

> "(1) For the purpose of this Act goods and services-
>
> (a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.
>
> (b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.
>
> (2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

15. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, the Court of Justice of the European Union ("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 complementary."

16. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited ("Treat")* [1996] RPC 281. At [296], he identified the following relevant factors:

> "(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."

17. In *YouView TV Ltd v Total Ltd,* [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words of 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."

18. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The General Court ('GC') clarified the meaning of "complementary" goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 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."

19. The General Court (GC) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

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

20. On this basis, the competing goods and services are as follows:

Opponent's goods & services	Applicant's goods
Class 3: Cosmetics and skin care products, namely, Depigmenting Cream, Oil-Free Moisturizing	**Class 3:** Cosmetics; toiletries; massage oils; essential oils; perfumes; exfoliating scrubs;

Cream, Eye Contour Cream, Vitamins Serum, Retinol Serum, Global Age Cream, Anti-Wrinkle Expression Cream, Age Plus Serum. **Class 44:** Aesthetic services namely, Dermapen Glow, Photorejuvenation, Peelings, Fractional Radiofrequency, Facial Hygiene, HIFU Lifting, Radiofrequency, Push-up, Cryolipolysis, Mesotherapy, Pressotherapy, Cavitation, Laser Hair Removal, Massages, Creams, Nail Fungus, Anti-Acne, Warts, Other Dermatological Conditions, Botulinum Toxin, Fillers (Hyaluronic Acid), Chemical Peeling, Tension Threads, Plasma (PRP), Lipola.	moisturisers. **Class 5:** Vitamins; supplements. **Class 32:** Non-alcoholic beverages; fruit juices; vegetable juices.

21. In its submissions, the opponent compares the contested goods to its earlier goods in Class 3. I will therefore follow the same approach to conduct my assessment below.

22. The earlier specification contains the word "*namely*" in more than one instance. Guidance on how to treat this word is contained in the addendum to the Trade Mark Registry's Classification Guide, which reads as follows:

> "Note that specifications including "namely" should be interpreted as only covering the named Goods, that is, the specification is limited to those goods. Thus, in the above "dairy products namely cheese and butter" would only be interpreted as meaning "cheese and butter" and

not “dairy products” at large. This is consistent with the definitions provided in Collins English Dictionary which states “namely” to mean “that is to say” and the Cambridge International Dictionary of English which states “which is or are”.” (emphasis added)

23. For the purpose of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.[3]

Class 3

24. As outlined earlier in this decision, the applicant admitted that the competing goods in Class 3 are identical or similar. Even though identity or similarity has not been denied, I will need to assess the degree of similarity between the competing terms.

25. The contested term “*cosmetics*” is a broad term that would readily encompass the cosmetic goods in Class 3. Therefore, they are identical on the principle outlined in *Meric*.

26. The contested term “*moisturisers*” is a broad term that would cover the earlier term “*Oil-Free Moisturizing Cream”* in Class 3. Therefore, they are identical on the principle outlined in *Meric*.

27. The contested “*toiletries*” refers to articles used in washing and taking care of the user’s skin. Given that these goods are ordinarily used in cleaning and the earlier goods are typically used for cosmetic reasons, the intended purpose between the contested goods and the earlier goods is not the same. Nevertheless, there is an overlap in nature and method of use as both can consist of liquid substances that are applied to the user’s skin. There is also an overlap in users and trade channels, as they can be

[3] *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

purchased from supermarkets and other retail establishments. The competing goods may be located in close proximity to one another and may be produced by the same undertakings. However, they are not important or indispensable to the use of one another and are, therefore, not complementary. Neither, in my view, is there a competitive relationship between them. For these reasons, I consider the respective goods to be similar to between a medium and high degree.

28. The contested term "***essential oils***" are liquid compounds which, ordinarily, contain plant extracts. In the absence of any evidence to the contrary, they may have a number of uses, including cosmetic enhancement. The nature of the contested goods is different. The earlier cosmetic goods consist of liquids (some of which are oil-free), while the contested goods often consist of chemical compounds. There may be an overlap in the intended purpose of the competing goods to the extent that they can be used for cosmetic reasons. Further, the competing goods could be applied to the user's skin, and as a result there is an overlap in method of use. Although the competing goods are both sold in retail establishments, they are unlikely to be produced by the same undertakings and are not typically found on the same section or in close proximity from each other. Further, they are not complementary or in competition. In light of the above, I consider that the competing goods are similar to between a low and medium degree.

29. The contested "***massage oils***" are similar to the earlier goods "*Oil-Free Moisturizing Cream*", which I consider to be the closest comparable term in the earlier specification. The nature of the respective goods will differ. This is because the earlier creams are oil-free, whereas the contested goods are oils. Although both goods overlap in method of use (both are applied to the skin), the primary purposes of the goods are different (cosmetic enhancement v relaxation or therapeutic benefits). However, users will comprise both the general and professional public, and both sets of goods may be purchased for home use or by professionals (e.g. health or beauty spas). There is also an overlap in trade channels, as they will be sold by the same physical shops/websites. I do not consider that they are

complementary or in competition with each other. I find the respective goods to be similar to between a low and medium degree.

30. The contested "*perfumes*" are different in their nature to the earlier cosmetic goods in Class 3. While the primary function of the earlier goods is to moisturise or enhance the appearance of the user, the contested goods focus on providing fragrance. However, they overlap in their general purpose that of personal grooming. The competing goods may overlap in method of use and trade channels, and they will still be placed in close proximity. Further, it is not uncommon for the manufacturers of perfumes to offer bundles, for example, perfumes and moisturising creams, featuring the same scent as the perfume itself. It would therefore not be unreasonable for the average consumer to mistakenly assume that the competing goods derive from the same undertaking. Therefore, there is a degree of complementarity. I find the competing goods to be similar to a medium degree.

31. The contested "*exfoliating scrubs*" are used to remove dead skin cells from the user's skin. The method of use of the contested goods and the earlier terms in Class 3 as well as the respective users are likely to be the same. The competing goods are all applied to the skin to cleanse or enhance, in some respect, though there may be some distinguishing features in their physical nature. The goods will likely be sold alongside one another on the shelves of the same retail establishment and will reach the market via the same channels of trade. The goods could, in some circumstances, be in competition, though they are not complementary. Overall, I find the goods are similar to a high degree.

Class 5

32. As to the contested "*vitamins; supplements*" in Class 5, the opponent claims that these share the same purpose, distribution channels, users with the earlier "*Vitamins Serum*" in Class 3, and they are complementary. I note that the contested terms are broad terms and are unlimited. In this

regard, I agree with the opponent that some vitamins and supplements are also focused, for example, on improving the user's appearance. Thus, users will be shared, and there will likely be an overlap in trade channels, as they can both be purchased from the same retailers, such as health and beauty retail shops and pharmacies. Whilst the goods may be offered or used together, it seems unlikely they will be important or essential to one another. In the absence of evidence, I do not consider them to be complementary. However, there may be a degree of competition to the extent that someone seeking to achieve a particular outcome or change to their skin may choose to purchase either vitamins or supplements, or a vitamins serum claiming to produce the same result. However, there is no overlap in nature and method of use. Overall, I consider the goods to be similar to a medium degree.

Class 32

33. In terms of the contested goods "*non-alcoholic beverages; fruit juices; vegetable juices*" in Class 32, the opponent claims that the competing goods are closely related stating that "*the wellness and beauty industries increasingly blur the line between topical and ingestible products. "Vitamin water", "collagen drinks", and "beauty juices" are widely marketed to the same consumer segment as skincare products*". In the absence of evidence to support this, I do not see any obvious similarity between the competing specifications. They differ in nature, purpose, method of use, and trade channels. There is no degree of competition or complementarity. Even though there is an overlap in users, this is not sufficient to find similarity.

34. The likelihood of confusion does not arise in relation to the contested goods which I have found to be dissimilar to the earlier mark's goods and services.[4] Therefore, the opposition in relation to those goods fails here.

[4] Case C-398/07, *Waterford Wedgwood plc v OHIM*; and *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, para 49.

Average Consumer and the Purchasing Act

35. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 and services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

36. In *Lidl Great Britain Limited & anor v Tesco Stores Limited & anor [2024]* EWCA Civ 262, Lord Justice Arnold explained:

> "16. First, the average consumer is both a legal construct and a normative benchmark. They are a legal construct in that consumers who are ill-informed or careless and consumers with specialised knowledge or who are excessively careful are excluded from consideration. They are a normative benchmark in that they provide a standard which enables the courts to strike a balance between the various competing interests involved, including the interests of trade mark owners, their competitors and consumers.
>
> 17. Secondly, the average consumer is neither a single hypothetical person nor some form of mathematical average, nor does assessment from the perspective of the average consumer involve a statistical test. They represent consumers who have a spectrum of attributes such as age, gender, ethnicity and social group.
>
> 18. Thirdly, assessment from the perspective of the average consumer is designed 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. [...]
>
> 19. Fourthly, the average consumer's level of attention varies according to the category of goods or services in question.

20. Fifthly, 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."[5]

37. The average consumer of the goods will be a member of the general public without excluding that a professional user, such as a beautician, may be included. The goods can be selected from outlets, stores, brochures, catalogues, and online. In retail premises, the goods will be displayed on shelves, where they will be viewed and self-selected by consumers. Therefore, visual considerations will dominate the selection of the goods in question, but aural considerations will not be ignored in the assessment. The cost of the goods may vary, but in any case, and irrespective of the cost, the average consumer may examine the products to ensure that they select the correct type or quality, aesthetic, scent and the suitability for their specific needs. In this regard, the average consumer is likely to pay a medium degree of attention when selecting the goods at issue.

Distinctive Character of the Earlier Trade Mark

38. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

"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

[5] Approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc and anor* [2025] UKSC 25, at paragraph 30.

Windsurfing Chiemsee v Huber and Attenberger [1999] ECR I-0000, paragraph 49).

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)."

39. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it.

40. The opponent submits that:

"2.1 Both marks prominently feature the dominant and distinctive element **LEMON**, which will be perceived as the core of the brand identity by consumers.

2.2 The secondary elements, **BEAUTY** and **APPEAL**, are both descriptive and of weak inherent distinctiveness. Each evokes notions of attractiveness, allure, or visual enhancement. In this sense, they share an overlapping semantic field and reinforce the overall impression that the goods and services are related to aesthetics, appearance, and self-care."

41. As these are fast track proceedings in which the opponent has filed no evidence of any use it may have made of its earlier trade mark, I have only its inherent distinctiveness to consider. The earlier mark consists of the ordinary and well-known word elements “LEMON” and “BEAUTY”. I consider that the word element “LEMON” will be slightly allusive of the earlier cosmetic goods, suggesting that these products may have a lemon scent or contain such ingredients. In addition, I agree with the opponent that the word “BEAUTY” in the context of the earlier goods and services, is likely to be perceived as indicative of their characteristics, i.e. that the goods are beauty products and the services concern the beautification of users. Weighing all the factors, I find that the combination of the word elements and the presentation of the mark, including the yellow underline, renders the mark as a whole inherently distinctive to a relatively low degree for the earlier goods. For the earlier services, the word element “LEMON” is not allusive to the provision of the services as it is in the case of goods; therefore, the mark will be more distinctive but to no more than a medium degree.

Comparison of Trade Marks

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

43. 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.

44. The marks to be compared are:

Earlier Mark	Contested Mark
	**LEMON APPEAL**

Overall Impression

45. The opponent submits that the word "LEMON" is the most dominant and distinctive element in the competing marks with the word elements "BEAUTY" and "APPEAL" being descriptive and of weak inherent distinctiveness.

46. The earlier mark consists of the word elements "Lemon" and "BEAUTY" in black, arranged in a stacked format, with "Lemon" positioned above "BEAUTY". I also note that the first two letters of the word element "Lemon" are underlined with a yellow gradient line. The word "Lemon" is significantly larger in size and in a bold font, as opposed to the descriptive word element "BEAUTY", which appears in a significantly smaller and standard font. Given its size and positioning, I consider that the overall impression of the earlier mark is dominated by the word "Lemon". The word element

"BEAUTY" and the yellow underline still contribute to the overall impression but to a much lower degree.

47. The contested mark is a word mark. Registration of a word mark protects the words themselves.[6] As I will come to discuss in the conceptual comparison, I disagree with the opponent's submissions and consider that the average consumer is likely to perceive the mark as a unit. Thus, the overall impression of the mark lies in the combination of these words.

Visual Comparison

48. The competing marks share the word element "LEMON". However, they differ in the presence/absence of the word elements "BEAUTY" and "APPEAL". In addition, the presentation of the earlier mark together with the yellow underline would be points of difference. Taking the overall impression of the marks and the similarities and differences into account, I consider that the marks are visually similar to a medium degree.

Aural Comparison

49. Aurally, the competing marks will be pronounced entirely conventionally. The competing marks will aurally share the same verbal element, "LEMON", while differing in the articulation of the verbal elements "BEAUTY" and "APPEAL". The underline in the earlier mark will not be articulated. Considering all the factors, including the overall impression, I find that the marks are aurally similar to a medium degree.

Conceptual Comparison

50. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v*

[6] See *LA Superquimica v EUIPO*, T-24/17, para 39; and *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

OHIM [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

51. The opponent submits that:

> "Conceptually, both marks convey the same general idea of products or services that make one "look and feel good", or that "enhance appeal or beauty". The average consumer is unlikely to distinguish clearly between them, especially when used in connection with cosmetics, skincare, and wellness-related goods."

52. The applicant claims that the contested mark alludes to the term "lemon peel".

53. The word elements in the earlier mark are ordinary dictionary words and will be given their ordinary meaning. I also consider that they will be conceptualised separately by the average consumer. This is primarily due to the size, placement, and descriptiveness of the word "BEAUTY" in the mark, as outlined earlier in this decision.[7] With respect to the contested mark, and in light of the absence of evidence, I consider that only a small minority of consumers may see it as a pun referring to "LEMON PEEL". Further, I disagree with the opponent's submissions as to the conceptualisation of the contested mark. In the absence of evidence, I am not prepared to accept that such a meaning will be immediately grasped by the average consumer. Even though the word "APPEAL" has more than one meaning, it is my view that the unit created by the contested mark "LEMON APPEAL" will most likely be conceptualised as referring to the appealing qualities/nature of a lemon. Taking into account all of the above, including the overall impressions, I find that the degree of conceptual

[7] Whilst I appreciate that the conceptual comparison is usually done without reference to the goods and/or services at issue, as per *EMILIANA* (Case BL O/054/22), the consumer does look to the goods and/or services to inform the meaning of the mark, particularly where there is a link between the conceptual meaning of the mark and the goods and/or services to which it is affixed (*LIGHT VITAMIN*, Case BL O/1174/25). In the present case, I am of the view that the descriptive nature of the earlier goods and services related to the word "BEAUTY" cannot be ignored.

similarity falls between low and medium based on the use of the common element “LEMON”.

Likelihood of Confusion

54. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that 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.[8] It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.[9]

55. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.

56. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in Bimbo, on the court’s earlier judgment in *Medion v Thomson*. He stated:

> “18 The judgment in Bimbo confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the

[8] See *Canon Kabushiki Kaisha*, paragraph 17.

[9] See *Lloyd Schuhfabrik Meyer*, paragraph 27.

situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER)."

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors."

Arnold J. (as he then was) found that there was no likelihood of confusion between the marks 'ORIGIN' and 'JURA ORIGIN' (both of which were for alcoholic beverages). Despite the similarity in the use of the word ORIGIN,

it was found that that word was inherently descriptive and had low distinctiveness for wine and whisky. Consequently, the case law set out in *Medion v Thomson* did not apply.

57. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis QC (as he then was) as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

> "38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.
>
> 39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

58. Earlier in this decision I have concluded that:

- the competing goods at issue are identical and similar to various degrees;
- the average consumer for the goods at issue will be a member of the general public, without excluding professional users. The selection process is predominantly visual without discounting aural considerations. The level of attention paid by the general public will be of medium degree;
- the competing marks are visually and aurally similar to a medium degree, and conceptually similar to between a low and medium degree;

- the earlier mark has a relatively low degree of inherent distinctiveness for the earlier goods. For the earlier services, the mark will be more distinctive but to no more than a medium degree.

59. The applicant asserted that there is no likelihood of direct or indirect confusion and no likelihood of association between the marks. However, the opponent submitted that "*the average consumer is likely to assume a commercial link between LEMON BEAUTY and LEMON APPEAL*." In my view, the opponent's submissions appear to be predicated on there being a likelihood of indirect confusion. Regardless of whether I have accurately interpreted those submissions, I will proceed to the assessment of both direct and indirect confusion below.

60. Taking into account the above factors and considering the identical goods in play, there is no likelihood of direct confusion. Notwithstanding the doctrine of imperfect recollection, it is highly unlikely for the average consumer, while paying a medium degree of attention during the selection process, to entirely overlook the second word element "APPEAL" in the contested mark and the word element "BEAUTY" in the earlier mark. I also consider the words in the contested mark will be seen as a unit that carries its own conceptual "hook" in the minds of the consumers, thereby aiding them in distinguishing the marks. Given that direct confusion involves no process of reasoning, I consider that the average consumer will not overlook the differences between the competing marks, and, thus, it is unlikely to mistake one mark for the other.

61. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Iain Purvis QC (as he then was), sitting as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it 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).”

These examples are not exhaustive. Rather, they were intended to be illustrative of the general approach.[10]

62. I bear in mind that there should be a proper basis for a finding of a likelihood of indirect confusion.[11] Even if the average consumer recalls the points of similarity between the marks, such as that they both contain the word element "LEMON", I still consider the marks would not be indirectly confused. Sitting as the Appointed Person in *Duebros Limited v Heirler Cenovis GmbH,*[12] James Mellor QC stated:

> "81.4 […] I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining[13] in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: 'Taking account of the common element in the context of the later mark as a whole.'" (Emphasis added)

I also bear in mind the comments of Professor Ruth Annand, sitting as the Appointed Person in *BARKERS BREW*, BL O/476/14, where she stated:

> "26. On the contrary, the CJEU makes clear in *Bimbo* that "hanging together" is not the determinative criteria in assessing a composite mark: the decisive question being whether the composite mark forms a unit having a different meaning as compared to its components taken separately (Bimbo, para. 25).
>
> 27. Mr. Malynicz referred me to 2 earlier decisions of Mr. Geoffrey Hobbs Q.C. sitting as the Appointed Person in *CARDINAL PLACE* Trade Mark, BL O/339/04[3] [fn[3] CARDINAL PLACE geographical

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

[11] Ibid.

[12] Case BL O/547/17 above.

[13] In *L.A. Sugar*.

whereas CARDINAL religious] and *CANTO* Trade Mark, BL O/021/06, as similarly expressing the same point that marks must be compared as wholes, considering the blend of meaning given by the composite mark against the single term."

63. In my view, there is no clear basis for a finding of indirect confusion. In accordance with the rationales cited above, the word elements of the contested mark, "LEMON APPEAL", form a cohesive whole. That blend of meaning emanating from the combination of the said words will convey a concept that goes beyond the meaning of the shared word "LEMON" alone. I note here that the overall impression lies within the unit of these words. As a result, the word "LEMON" does not retain an independent distinctive role within the contested mark. To my mind, the coincidence of the "LEMON" element in both marks is not likely to lead the consumer to believe there is a trade connection. In addition, I consider that the word "LEMON" is not so strikingly distinctive that consumers would assume only one undertaking uses it, and the differences between the competing marks are not consistent with a sub-brand, brand extension or variant. If the opponent's mark is brought to mind, this will be a mere association, not confusion.[14] I see no other reason why a common origin or an economic connection would be assumed and so I find that, even where the goods are identical, there is no likelihood of indirect confusion.

64. For completeness, the above findings extend to the goods that I found to be similar to any degree.

Outcome

65. The opposition on the basis of the claim under Section 5(2)(b) fails. Therefore, subject to any successful appeal, the application can proceed to registration.

[14] See *Duebros*, in paragraph 81.

Costs

66. The applicant has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the other side's statement and preparing a counterstatement	**£250**
Total	**£250**

67. I, therefore, order Lemon Clinica SL to pay to Lemon Appeal Ltd the sum of £250. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 23rd day of March 2026

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General