

O/0351/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4114200

IN THE NAME OF ELITE OUD LTD

TO REGISTER THE FOLLOWING TRADE MARK:

Barakkat

IN CLASS 3

AND

THE OPPOSITION THERETO UNDER NUMBER 452605

BY ARTESSENCE FZE

Background and pleadings

1. On 20 October 2024, Elite Oud Ltd (“the applicant”) applied to register the trade mark shown on the cover page in the UK. The mark was accepted and published in the Trade Marks Journal on 22 November 2024. The following goods were filed under the mark:

Class 3: Perfumes; Eau de toilette; Eau de parfum; Eau de Cologne; Perfumery products; Cosmetics; Perfume oils; Perfumery and fragrances; Cologne; Aromatics for fragrances; Perfumery; Extracts of perfumes; Body deodorants [perfumery]; Eau de cologne [cologne water]; Body fragrances; Perfumeries; Room perfumes in spray form; Room fragrances; Scented body spray; Scented room sprays; Eau de colognes; After-shave; Fragrance for household purposes; Perfumery, essential oils.

2. On 18 February 2025, Artessence FZE (“the opponent”) opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ This is on the basis of its earlier UK trade mark:²

BLESSED BARAKA

UK registration number: UK00913132841

Filing date: 31 July 2014

Registration date: 23 December 2014

Relying on all goods, namely:

Class 3: Perfumery, deodorants, eau de cologne, eau de toilette, toilette water, amber [perfume], Emery, antiperspirants [toilettries], Oils for perfumes and scents, incense, essential oils, after shave lotions,

¹ Prior to 20 September 2023, the opponent was named Artessence FZC. The same company has always been the proprietor of the earlier mark.

² The earlier mark is a comparable mark. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM. As a result, the contested mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

shaving soap, shaving preparations, air fragrancing preparations, bath salts, tissues impregnated with cosmetic lotions; cosmetics, hair lotions; cosmetic creams, Cosmetic kits, skin care creams, body shampoos, hair shampoos, hair conditioners, hair booster tonics, hair de-colorants, hair sprays, hair waving preparations, massage gels for hand and body, gels for hair, hair colorants, hair dyes, foot and body lotions, bathing solutions and salts, mouth washes, mouth sprays, tooth paste, tooth powders, tooth gloss, soaps.

3. By virtue of its earlier filing date, the above registration constitutes an earlier mark in accordance with section 6 of the Act. As the opponent's earlier registration had been registered for more than five years before the filing date of the applicant's mark, it is, in principle, subject to the use provisions set out in section 6A of the Act. The opponent states that it has used the mark for all of the registered goods.

4. In its pleadings, the opponent claims that the respective goods are identical or highly similar and that the marks are visually, phonetically and conceptually similar. As such, the opponent submits there will be a likelihood of confusion on the part of the public, including a likelihood of association.

5. The applicant filed a counterstatement in which it denies that the marks and goods are identical or similar, and therefore denies any likelihood of confusion. The applicant requested the opponent to file proof of use for the opponent's earlier registration relied upon.

6. Only the opponent filed evidence. No hearing was requested. Only the applicant filed submissions in lieu of a hearing. This decision is therefore taken following a careful perusal of the papers.

7. The opponent is represented by FRKelly. The applicant is represented by Bird & Bird LLP.

8. 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.

Evidence

9. The opponent's evidence was filed in the form of the witness statement of Tracy Beer dated 19 June 2025. Ms Beer is the UK Country Manager of the opponent. The witness statement introduces seven exhibits, labelled EXH 1 to EXH 7. The purpose of the evidence is to address the applicant's request for the opponent to show proof of use for the opponent's earlier registration.

10. I do not intend to summarise the evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Preliminary issues

11. In the opponent's witness statement, Ms Beer states:

"The opponent sells goods falling within the class 3 specifications of the BLESSED BARAKA trade mark: "Perfumery, deodorants, eau de cologne, eau de toilette, toilette water, amber [perfume], antiperspirants [toiletries], oils for perfumes and scents, air fragrancing preparations, cosmetics, cosmetic kits".

12. I note that only some of the registered goods have been listed. I therefore take this as a concession that the earlier mark has not been used on the remaining registered goods, namely:

Class 3: Emery, incense, essential oils, after shave lotions, shaving soap, shaving preparations, bath salts, tissues impregnated with cosmetic lotions; cosmetics, hair lotions; cosmetic creams, skin care creams, body shampoos, hair shampoos, hair conditioners, hair booster tonics, hair de-colorants, hair sprays, hair waving preparations, massage gels for hand and body, gels for hair, hair colorants, hair dyes, foot and body lotions, bathing solutions and salts, mouth washes, mouth sprays, tooth paste, tooth powders, tooth gloss, soaps.

13. I also note that, in its submissions in lieu, the applicant raised the concern that the opponent was not the proprietor of the earlier registration at the relevant date. In a letter to the Tribunal dated 3 October 2025, the opponent clarified that the opponent has been the proprietor of the earlier registration at all times. The opponent was formerly Artessence FZC and, on 20 September 2023, its legal status changed to Artessence FZE. This was a change of legal status only and not a transfer of title, therefore the opponent was the proprietor of the earlier registration both at the filing date of the contested mark, and throughout the opposition proceedings. I accept this submission.

Decision

Relevant period

14. The opponent's earlier mark was registered on 23 December 2014. As previously set out, the applicant requested the opponent prove use of its mark and because the earlier mark had been registered for more than five years on the priority date of the contested application, Section 6A of the Act applies. It states:

“(1) This Section applies where—

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

15. As the earlier mark is a comparable marks, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the “five-year period”) has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union”.

16. The relevant period for proof of use of the opponent’s marks is from 21 October 2019 to 20 October 2024. I note that the relevant territory will be considered the EU (including the UK) from 21 October 2019 to 31 December 2020, and the UK only from 1 January 2021 to 20 October 2024.

PROOF OF USE

Relevant case law

17. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, Case C-259/02 La Mer Technology Inc v Laboratories Goemar SA [2004] ECR I-1159, Case C-416/04 P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I-4237, Case C-442/07 Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'[2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009]

ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], Case C-609/11 Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089], Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 Ferrari SpA v DU [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at [36]; Sunrider at [70]; Verein at [13]; Centrotherm at [71]; Leno at [29]; Ferrari at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Centrotherm at [71]; Leno at [29]; Gözze at [37], [40]; Ferrari at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of

a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 Lidl Stiftung & Co KG v European Union Intellectual Property Office [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. Lidl at [33]. In Awareness Ltd v Plymouth City Council [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

‘19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know. [...]

22. [...] it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal [...] comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

18. Proven use of a mark which fails to establish that “the commercial exploitation of the marks is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

Genuine use

19. In the opponent's witness statement, Ms Beer states that the opponent has been selling the "core goods" since 2015. Ms Beer states that the "core goods" are:

"Perfumery, deodorants, eau de cologne, eau de toilette, toilette water, amber [perfume], antiperspirants [toilettries], oils for perfumes and scents, air fragrancing preparations, cosmetics, cosmetic kits".

20. Ms Beer refers to Exhibit 1 as showing visuals of the core goods. This exhibit contains photographs of a black perfume bottle with a T-shaped lid and a silver and red diamond in the middle of the bottle. The main portion of the bottle does not have the mark on it, but the mark is engraved on the lid, as well as on the outer packaging box. The box also states that the product is eau de parfum. Exhibit 2 also shows a photograph of the perfume bottle in a listing on a third-party website. The mark can be seen at the top of the webpage. This page is not dated, but it does list the "year" of the perfume as 2015.

21. The opponent's website is shown in Exhibit 3. I note that it is undated. The website shows a perfume bottle, with the mark shown at the top of the webpage. It appears possible for a consumer to purchase the opponent's perfume through this website.

22. Ms Beer states that the "core goods" are available to purchase in some of the UK's largest department stores. Exhibit 4 includes a map of these department stores, which shows that the sale of the opponent's goods is geographically widespread across the UK. This exhibit also includes turnover figures from some stores as well as photographs of the goods for sale in said stores. Listings of the perfume for sale on third-party websites are provided in Exhibit 5. All of the sites list the BLESSED BARAKA perfume at £260. In many of the listings, the mark is in the title or description of the goods as well as on the good itself shown in a photograph. The goods are described as eau de parfum.

23. In the witness statement, Ms Beer provides turnover figures for the core goods sold under the BLESSED BARAKA mark, for the years 2021 to 2025. I note that no figures were provided for the year 2020, and that figures were provided for the year 2025, which is outside the relevant period.

Year	Sales in GBP
2024	37,067
2023	21,603
2022	43,273
2021	39,763

24. Invoices have been provided for the years 2021 to 2025. I note that, although most are relevant, some of the invoices provided fall outside the relevant period. The relevant invoices show the sale of various perfumes by the opponent, including some under the BLESSED BARAKA mark in different volumes. The sales of goods under the mark range from 1 perfume at approximately £150 to 24 perfumes at approximately £2300 total. Overall, the invoices show that goods under the brand have been sold to a variety of UK retailers between October 2020 and August 2024.

25. I also note that, in the invoices, the goods sold under the BLESSED BARAKA mark are listed as “THE ABSOLUTES – BLESSED BARAKA EDP Spray 90ml”, “BLESSED BARAKA EDP 1.5ml vial x 10” or “Blessed Baraka EDP 90ml”. Considering the above evidence that shows that the goods are eau de parfum, it is reasonable to conclude that EDP stands for eau de parfum.

26. In her witness statement, Ms Beer also notes that the opponent’s Instagram page has more than 140,000 followers. Screenshots of this Instagram page are provided in Exhibit 7. I note that, as social media has a global audience, I cannot determine how many of the followers are UK consumers. Screenshots of posts from August 2024 showing a perfume with the BLESSED BARAKA mark included in the caption. A screenshot of a video shows the words “BLESSED BARAKA MYSTIC EXPERIENCE” on the video, but this post is undated. A screenshot of a post from May 2024 shows the perfume bottles with the words BLESSED BARAKA in small writing on the photo but not in the caption.

27. An assessment of genuine use is a global assessment, which includes looking at the evidence as a whole.³ The evidence presented demonstrates that perfumes bearing the opponent's mark were sold to UK consumers during the relevant period. I have not been provided evidence or submissions relating to the size of the perfume market. However, it is reasonable to assume that the use shown is low in the context of the perfume market. Despite this, use need not be qualitative in order for it to be deemed genuine; the evidence before me need only demonstrate that the opponent has made a genuine attempt to create or preserve a market share for these goods in the relevant territory. Taking all the evidence into account, I am satisfied that the opponent has shown genuine use of its mark on perfumes.

Fair specification

28. Having reached the above conclusion, I must determine a fair specification upon which the opponent is entitled to rely, bearing in mind the use that has been demonstrated.

29. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

30. In line with the principles set out in *Merck*⁴, the use shown sufficiently covers the sale of 'perfumery', as eau de parfum is a type of perfume. I do not find a need to limit this term any further as this would unduly strip the opponent of any due protection for its goods.

31. As there is no evidence relating to any other goods, the opponent has not shown genuine use of its remaining goods and it is therefore not permitted to rely on these.

³ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T-415/09

⁴ *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834

32. As such, a fair specification for the earlier mark is as follows:

BLESSED BARAKA

Class 3: Perfumery.

Section 5(2)(b)

33. Section 5(2)(b) of the Act is as follows:

(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”.

Section 5A

34. Section 5A of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

“5A 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.”

The principles

35. 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 the goods

36. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the CJEU stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

37. 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.

38. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC 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.”

39. With this in mind, the goods for comparison are as follows:

Opponent’s goods:	Applicant’s goods:
Class 3: Perfumery.	Class 3: Perfumes; Eau de toilette; Eau de parfum; Eau de Cologne; Perfumery products; Cosmetics; Perfume oils; Perfumery and fragrances; Cologne; Aromatics for fragrances; Perfumery; Extracts of perfumes; Body deodorants [perfumery]; Eau de cologne [cologne water]; Body fragrances; Perfumeries; Room perfumes in spray form; Room fragrances; Scented body spray; Scented room sprays; Eau de colognes; After-shave; Fragrance for household purposes; Perfumery, essential oils.

Perfumes; perfumery products; perfumery and fragrances; perfumery; eau de parfum; perfumeries; perfumery, essential oils; Eau de toilette; eau de cologne; eau de cologne [cologne water]; eau de colognes; cologne; body fragrances; extracts of perfume; perfume oils; Body deodorants [perfumery]; Room perfumes in spray form; room fragrances; scented room sprays; fragrance for household purposes; Scented body spray

40. The above goods are either self-evidently identical to or fall within the scope of the opponent's 'perfumery'. These goods are therefore considered identical according to the principles set out in *Meric*.

Cosmetics

41. The above goods are broad in scope but I do not consider them to overlap with the opponent's 'perfumery'. The use of the goods differs as the above goods are used to enhance personal appearance, while the opponent's goods are used to fragrance the body. The users overlap as both will be used by members of the general public. The nature of the goods typically differs as the opponent's goods are oil-based liquids, while the above goods vary widely in form, including creams, lotions and gels. Trade channels will overlap as both are sold in supermarkets and health and beauty stores, although, they are typically sold on different shelves of these stores. However, I note that it is commonplace for cosmetic companies to sell perfumes, so I consider there to be a significant overlap in trade channels. There is no competition or complementarity. Overall, I find the above goods to have a low similarity to the opponent's 'perfumery'.

After-shave

42. I consider the above goods to have the primary purpose of soothing and disinfecting the face, with an additional purpose of providing a scent. I therefore find some overlap in purpose with the opponent's 'perfumery'. The nature of the goods also broadly overlaps as both can be in a liquid form, but more specifically differs where the above goods are alcohol-based while the opponent's goods are oil-based. Users will overlap as both goods will be used by the general public. Trade channels will overlap as both are sold in supermarkets and health and beauty stores; however, they are typically sold on different shelves of these stores. There is no competition or

complementarity. Overall, I find the above goods to have a low similarity to the opponent's 'perfumery'.

Aromatics for fragrances

43. The above goods are ingredients used to create perfumes. The purpose of these goods therefore differs from the opponent's 'perfumery', except that they both are broadly intended to provide a pleasant fragrance. The users differ as the opponent's 'perfumery' will be used by the general public, while the above goods will be used by manufacturers of perfumes. The nature of the goods overlaps as both are fragranced, oil-based liquids. Trade channels differ as the opponent's goods will be sold in supermarkets and health and beauty stores, while the above goods will be sold through industrial suppliers. There is no competition. The above goods are required for the production of perfumery, but as the consumers differ, there is no complementarity. Overall, I find the above goods to have a low similarity to the opponent's 'perfumery'.

Comparison of marks


44. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

46. The respective trade marks are shown below:

The opponent's earlier mark	The applicant's contested mark
BLESSED BARAKA	

47. In its statement of grounds, the opponent states that the marks are visually, phonetically and conceptually similar.

48. In its submissions in lieu, the applicant submits that the marks are visually, aurally and conceptually dissimilar. It submits that the additional first word in the opponent's mark is an obvious difference.

Overall impression

49. The opponent's mark is a word-only mark consisting of the words "BLESSED BARAKA". Given that blessed is typically used as an adjective, and the consumer will view "baraka" as an invented or foreign word, I consider that 'blessed' qualifies 'baraka'. The words hang together and 'baraka' is slightly more dominant in the mark, although 'blessed' will not be overlooked, particularly as it is at the beginning of the mark.

50. The contested mark is a figurative mark consisting of the words "Barakkat" in a script font in a black colour. The word is the dominant element in this mark.

Visual comparison

51. The visual similarity between the marks resides in the second word "BARAKA" in the opponent's mark and "Barakkat" in the applicant's mark sharing the first five letters "BARAK".

52. The visual differences reside in the second word of the opponent's mark further having a letter A at the end, and the applicant's mark having the additional letters K, A and T at the end. Additionally, the opponent's mark has an additional first word "BLESSED". These differences are significant, particularly because the additional word is at the beginning of the opponent's mark, being where consumers tend to focus.⁵

53. Overall, I consider the marks to have a low visual similarity.

Aural comparison

54. The opponent's mark will be pronounced as the dictionary word blessed, followed by the three syllables 'BA-RA-KA', while the applicant's mark will be pronounced as the three syllables 'BA-RA-CAT'.

55. The marks overlap in the syllables 'BA-RA', which are the third and fourth syllables in the opponent's mark and the first and second in the applicant's mark. The final syllable of both marks overlaps in the shared pronunciation of "KA", but differs where the applicant's mark ends in a hard T sound.

56. There is a clear overlap in pronunciation, but there are more differences than similarities. Overall, I find the marks to have a low to medium aural similarity.

Conceptual comparison

57. The opponent's mark consists of the two words "blessed baraka". The first word will be understood to mean fortunate or divinely honoured. The second word is not an English language word, so it will appear to be a foreign word or an invented word, neither of which the consumer will ascribe a meaning to.

58. The applicant's mark consists of the word "Barakkat". This is not an English language word so, as above, it will appear to be a foreign word or an invented word, which the consumer will not ascribe a meaning to. This mark is conceptually neutral.

⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

59. The sole element of the applicant's mark and the stronger element of the opponent's mark are conceptually neutral. Although the word "BLESSED" will be known to consumers, the marks are incapable of being compared due to the applicant's mark's lack of any meaning. I therefore find the marks to be conceptually neutral.

Average consumer and the purchasing act

60. As the case law above indicates, it is necessary to determine who the average consumer is for the respective parties' services. I must then determine the manner in which the services are likely to be selected by the average consumer.

61. 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.

62. 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.

63. The majority of the goods at issue will be used by members of the general public. The goods at issue can be fairly expensive but, for the most part, are likely to be moderately priced. In both cases, consideration will be given to the fragrance, the price of the good and the quality of the good. Consumers will pay a medium degree of attention during the purchasing process of the goods at issue.

64. As noted above, aromatics for fragrances will be used by professionals in the field of perfume making. These consumers will take pricing and quality into consideration, as well as the source of the aromatic and the strength of its scent. As the qualities of the aromatics used will heavily affect the fragrances produced by the manufacturer, these consumers are likely to pay an above medium degree of attention during the purchasing process.

65. The goods will typically be accessed in a beauty or fragrance store or in a supermarket, where consumers will see the goods on a shelf. They may also be accessed online, where they will be viewed on webpages. Visual considerations will therefore dominate. In some circumstances, verbal recommendations may be given by sales associates, so I do not discount aural considerations.

Distinctive character of the opponent's mark

66. 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).”

67. 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/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 that has been made of it.

68. The earlier mark consists of the words “BLESSED BARAKA”. As noted above, the consumer will understand the first word to mean something upon which luck or holiness has been bestowed. They will understand the second word to be a foreign or invented word of unknown meaning. Neither word is descriptive or allusive of the goods. As such, I consider the earlier mark to possess a high level of inherent distinctiveness.

69. As the opponent has filed evidence of use of its mark, I will consider whether this evidence demonstrates enhanced distinctiveness of the mark. Although the invoices provided alongside Ms Beer's witness statement show sales to third-party retailers across the UK, the figures provided in the witness statement show that turnover is relatively low. In addition, no information is provided as to the marketing expenditure or the size of the relevant market. I do not find the evidence sufficient to demonstrate that the opponent's mark benefits from an enhanced degree of distinctive character. The inherent position outlined above therefore applies.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

70. 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 (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing act. 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 (*Lloyd Schuhfabrik* at [26]).

71. 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 services down to the responsible undertakings being the same or related.

72. Earlier in this decision, I found the goods to range from dissimilar to identical. I found the marks to have a low visual and a low to medium aural similarity. I found the marks to be conceptually neutral. I found the opponent's earlier mark to possess a high level of inherent distinctive character for the relevant goods, which has not been enhanced by use. I identified the average consumer of the majority of the goods to be members of the general public, paying a medium degree of attention. I further

identified the average consumer of the applicant's 'aromatics for fragrances' to be professionals paying a high degree of attention. I found that the goods would be selected primarily by visual means, although I did not discount aural considerations.

73. As noted above, 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 (*Lloyd Schuhfabrik* at [26]).

74. As noted above, the words of the earlier mark hang together and, although 'baraka' is more dominant, the first word "blessed" will not be overlooked, particularly as it is at the beginning of the mark.⁶ Taking into account the low visual similarity and conceptual neutrality, consumers would not directly mistake the parties' marks for each other, even on identical goods. I do not find a likelihood of direct confusion between the marks for any of the contested goods.

75. I will therefore proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion".

76. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, 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

⁶ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

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).”

77. 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.

78. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

79. Earlier I found that both words of the opponent’s mark “BLESSED BARAKA” hang together. although I found the word ‘baraka’ to be slightly more dominant in the mark,

I do not consider in this instance that either of the words of the mark has distinctive significance independently of the whole.

80. I consider that a consumers may note the similar words “baraka” and “barakkat” in the marks. It is possible that the consumer may overlook the additional letter K in the middle of the contested mark, but I find it unlikely that the final letter T would be overlooked, considering the at least medium level of attention paid during the purchasing process. I therefore do not consider that the consumer is likely to note ‘baraka’ and ‘barakkat’ as a common element, particularly as the additional T changes the visual and aural nature of the word. Additionally, I do not see any logical reason for a consumer to conclude that the addition of the word ‘blessed’ to the beginning of an earlier mark would indicate another brand of the owner of the earlier mark, or a brand extension, nor has the opponent made any arguments as to how the differences between the marks could point to indirect confusion. I find it likely that a consumer noting the similarities between ‘baraka’ and ‘barakkat’ would put any similarities down to coincidence and assume that the marks represented goods deriving from two different entities.

81. I therefore do not consider there to be a likelihood of indirect confusion between the parties’ marks for any of the contested goods.

Final Remarks

82. The opposition has been unsuccessful in its entirety and, subject to any successful appeal, the contested mark will proceed to registration.

COSTS

83. The applicant has achieved success in these proceedings and is therefore entitled to a contribution towards its costs. In the circumstances, I award the applicant the sum of £800 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the TM7 and statement of grounds and preparing and filing the TM8 and counterstatement:	£250
Considering the opponent's evidence:	£300 ⁷
Preparing submissions in lieu of a hearing:	£350
Total:	£800

84. I therefore order Artessence FZC to pay Elite Oud Ltd the sum of £800. 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 27th day of April 2026

K HARBACH

For the Registrar

⁷ I have awarded below the scale as the applicant did not file evidence itself.