O/0352/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004048616
IN THE NAME
HANGZHOU BLUESKY BRAND MANAGEMENT CO., LTD.
TO REGISTER THE FOLLOWING TRADE MARK:

USKY

IN CLASSES 03, 21 and 35

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000452546
BY SKY LIMITED

BACKGROUND AND PLEADINGS

1. On **08 May 2024, Hangzhou BlueSky Brand Management Co., Ltd.** ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on **15 November 2024** in respect of the following goods and services:

    Class 03: Essential oils; Cleansing milk for toilet purposes; Facial cleansing milk; Stain removers; Cosmetics; Deodorants for human beings or for animals; Cotton wool for cosmetic purposes; Cosmetic pencils; Toothpaste; Air fragrancing preparations.

    Class 21: Utensils for household purposes; Teapots; Drying racks for laundry; Combs; Cosmetic utensils; Make-up removing appliances; Insulating flasks; Cleaning instruments, hand-operated; Glassware; Powder compacts, empty.

    Class 35: Advertising; Business management assistance; Import-export agency services; Sales promotion for others; Provision of an online marketplace for buyers and sellers of goods and services; Personnel management consultancy; Bookkeeping; Organization of exhibitions for commercial or advertising purposes; Wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Office machines and equipment rental.

2. On **17 February 2025, Sky Limited** ("the Opponent") opposed the application under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is confined to some of the Applicant's services in class 35 only [1]. The remaining

[1] The list of the opposed services is shown in paragraph 16.

services in class 35, as well as the goods in classes 03 and 21, are not subject to the opposition.

3. The Opponent relies upon the following two trade marks:

Mark 1

SKY

UK Trade Mark registration number UK00002525359
Filing date: 02 September 2009
Registration date: 15 April 2022
Relying on some of its services in class 35 only. [2]

Mark 2

UK Trade Mark registration number UK00003859806 (series of 2)
Filing date: 15 December 2022
Registration date: 10 March 2023
Relying on some of its services in class 35 only. [3]

4. By virtue of their earlier filing dates, the above registrations constitute earlier marks within the meaning of section 6 of the Act. However, as they had not

[2] As shown in the services comparison table at paragraph 16.
[3] As shown in the services comparison table at paragraph 16.

been registered for five years or more at the filing date of the application, they are not subject to the use requirements specified within section 6A of the Act.

5. The Opponent submits that the respective marks are visually, phonetically and conceptually similar to a high degree, and that the services relied upon in its registrations are identical with and/or highly similar to those services applied for.

6. The Applicant filed a counterstatement denying that the marks are similar and asserting that the services in question are dissimilar.

7. The Opponent is represented by Dentons UK and Middle East LLP, and the Applicant is represented by Pawel Wowra. Neither party filed evidence, nor did they request a hearing. Only the Opponent filed written submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

RELEVANCE OF EU LAW

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.

DECISION

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

9. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

"5(2) 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"

10. Section 5A of the Act states as follows:

"Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

11. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

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

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

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

COMPARISON OF GOODS AND SERVICES

12. 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 1979."

13. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

> "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."

14. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") case, [1996] R.P.C. 281, for assessing similarity were:

> (a) The respective uses of the respective goods or services;
>
> (b) The respective users of the respective goods or services;
>
> (c) The physical nature of the goods or acts of service;
>
> (d) The respective trade channels through which the goods or services reach the market;
>
> (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
>
> (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

15. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),* Case T-325/06, the General Court stated that "complementary" means:

> "...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."

16. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term 'computer software'. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

> "[…] the applicable principles of interpretation are as follows: (1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services. (2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms. (3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers. (4) A term which cannot be interpreted is to be disregarded."

17. In *Gérard Meric v OHIM,* Case T- 133/05, the General Court ("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 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."

18. The services to be compared are:

Opponent's Services	**Applicant's Services**
UK00002525359 **Class 35:**	**Class 35:**

Advertising; promotional services; provision of product information and advice to prospective purchasers of home entertainment equipment, multi-media apparatus and instruments, television and radio equipment, audio visual equipment, set-top boxes, personal video recorders, video recorders, computer games software, hardware and peripheral devices; rental of advertising space; television advertising commercials; advertisement and promotion of television services; marketing studies; dissemination of advertising matter; arranging and conducting of trade shows and exhibitions; the bringing together, for the benefit of others of a variety of goods namely machines for household use, enabling customers to conveniently view and purchase those goods including via an Internet website, an interactive television shopping channel, a digital television shopping channel, an Internet walled garden or by means of interactive television and/or telecommunications (including voice, telephony and/or transfer of digital information or data) and/or interactive digital media; The bringing together, for the benefit of others, of a variety of advertising agency services, advertising services, online market place services in relation to	Advertising; Sales promotion for others; Provision of an online marketplace for buyers and sellers of goods and services; Organization of exhibitions for commercial or advertising purposes.

streamable and downloadable media content, including video and films, television programmes, computer games, music, images and ring tones provided by internet, telephone line, cable, wireless transmission, satellite or terrestrial broadcast, financial services, transport services, travel agency services, travel guide services, travel services, rental services relating to telecommunication facilities and equipment enabling customers to conveniently view and purchase those services, including over a global computer network;	
UK00003859806 **Class 35:** Advertising services, advertising agency services; providing media sales agency services; provision of airtime, advertising sponsorship and/or media space; retail services in connection with advertisements, electronic advertisements, advertising material and advertising campaign materials; click-through advertising services; consumer profiling for advertising and marketing purposes; providing advice and	

consultancy services relating to the measurement and/or evaluation of the effectiveness of advertising material and/or advertising campaigns; planning, creating, delivery and dissemination of advertising material and/or advertising campaigns; providing advice and consultancy services relating to the planning, creating, delivery and dissemination of advertising material and/or advertising campaigns; conducting market surveys, market analysis and market research; providing product placement services, including personalised product placement services; arranging competitions for advertising purposes; online retail services relating to DVDs; online retail services relating to audio, visual and/or audio visual content; online retail services relating to hardware and software for browsing, streaming, viewing, recording, storing and/or organising audio, visual and/or audio visual content, fixed line telephony services, mobile telephony services, broadband services, hardware and software for broadband services, mobile phones, tablets, mobile phone cases and chargers, headphones and audio, visual and/or audio visual content; online retail services relating to products and services connected with entertainment,	

games, gaming, health, fitness, dance, education, communication, social media, content creation, home monitoring, pet monitoring, translation and interpretation; retail store services provided via the internet allowing access to third party providers of entertainment, games, gaming, health, medical, pharmaceutical, fitness, dance, education, communication, dating, matchmaking, social media, content creation, home monitoring, pet monitoring, translation, interpretation and fashion products and services, food and beverages, and pharmaceutical advice and prescription management; provision of data and analytics services relating to customer services and marketing; provision of data and analytics services relating to customer services and marketing; organisation, operation and supervision of sales and promotional incentive schemes; providing business advice and consultancy relating to the provision of television services, broadband services, wireless local area network connection services and access to the internet; local area network and wide area network management services, online security services; information, advice and customer support services relating to all the aforesaid services.	

19. The Opponent submits that the Applicant's services are identical, or in the alternative, highly similar to its own services. It argues that the services share the same intended purpose, coincide in their providers, trade channels and end users, and are clearly complementary to each other.

20. The Applicant, on the other hand, submits that the services are dissimilar. It states that its services are narrowly defined whereas the Opponent's services span an extremely broad and highly specialised range of services, which are complex and technical in nature and are directed at a different target audience.

Advertising.

21. The above term is present in both the Applicant's and the Opponent's specifications. It is therefore self-evidently identical.

Sales promotion for others.

22. I consider the Opponent's term '*promotional services'* broad enough to cover the Applicant's service listed above. It is my view that the Applicant's term would be included in the more general category contained within the Opponent's specification. The above service of the Applicant is a type of promotional service in the field of sales and therefore, bearing in mind the principles of *Meric*, is considered identical.

Organization of exhibitions for commercial or advertising purposes.

23. I consider the Opponent's term '*arranging and conducting of trade shows and exhibitions'* broad enough to cover the Applicant's service listed above. It is my view that the Applicant's term would be included in the more general category contained within the Opponent's specification. The above service of the Applicant is the arranging of exhibitions for commercial and advertising purposes, whereas the Opponent's service is the arranging of exhibitions at

large, which includes for commercial and advertising purposes. Therefore, bearing in mind the principles of *Meric*, these services are considered identical.

Provision of an online marketplace for buyers and sellers of goods and services.

24. The Applicant's service above, in ordinary terms, refers to the provision of an online marketplace through which consumers are able to purchase goods and services. Its essential nature is that of a transactional retail platform, facilitating direct exchanges between buyers and sellers within a single purchasing environment.

25. By contrast, the Opponent's service, namely *'the bringing together, for the benefit of others, of a variety of […] online marketplace services in relation to streamable and downloadable media content […] enabling customers to conveniently view and purchase those services'*, is of a materially different nature. As I understand it, this service does not itself constitute an online marketplace but instead amounts to, essentially, a comparison service. Its function is to bring together and present a range of third-party online marketplaces offering access to digital media content such as films, music, games and television programmes. The consumer is therefore not purchasing goods or services from the Opponent but using its service as a tool to compare and access external platforms.

26. The purpose and method of use of the respective services also differ. The Applicant's service is used as a platform in its own right, enabling consumers to search for, select and purchase goods or services directly within the platform. The Opponent's service, by contrast, operates as a gateway, assisting consumers in navigating between different providers. While both services may ultimately facilitate a purchase, they perform distinct commercial roles.

27. Further, the services are neither complementary nor in competition. Each can operate independently of the other and neither is indispensable or important for the use of the other. Nor do they address the same consumer need, as one provides the point of sale while the other merely facilitates informed choice

between external providers. Although both services are available to the general public, this broad overlap is insufficient to give rise to similarity.

28. Taking all of the above into account, I find the services to be dissimilar. If, however, I am wrong in that finding, I consider any similarity between the services to be low, arising solely from the fact that both operate in an online marketplace context.

29. As I have found no similarity between these services, there cannot be a likelihood of confusion. Consequently, the opposition under Section 5(2)(b) therefore fails in respect of these services.[4]

30. However, as stated above, if I am wrong in my finding and there is a degree of similarity between the services, which cannot be more than low, then I shall proceed to consider the case on this basis below.

THE AVERAGE CONSUMER AND THE NATURE OF THE PURCHASING ACT

31. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer,* Case C-342/97).

32. 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:

[4] See *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA and *Waterford Wedgwood PLC v OHIM* - C-398/07 P

(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 and 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.

33. The Applicant submits that the average consumer primarily consists of business customers and commercial users, such as vendors, service providers and corporate entities seeking to promote and sell their goods or services. It states that they are typically professional or semi-professional users who engage with these services in the context of their business operations. As such, this

consumer exercises a higher-than-average degree of attention, particularly where the services involve commercial strategy, visibility and sales channels.

34. The Opponent, on the other hand submits that the services at hand are directed at both the general public at large, and at business customers. It states that sole traders or individuals engaged in small-scale retail sales outside of their primary job commonly purchase advertising services, and that the general public at large regularly engage with online marketplace services. Consequently, the Opponent submits that the likelihood of confusion should therefore be assessed from the perspective of the general public, since they are likely to pay the lowest degree of attention, which is at most, average.

35. In my view, I agree with the Opponent that the consumer of the contested services will be both businesses and the general public. The cost of the services in question is likely to vary, as will the frequency of purchase. The average consumer will take various factors into consideration such as the nature of the services, cost, the reputational standing of the provider and the suitability of the services for their specific needs. Where the average consumer is a business, they are likely to pay a higher degree of attention due to the potential impact of the service on their company's reputation. Consequently, the level of attention paid during the purchasing process for the services will be a medium degree where the average consumer is a member of the general public, and between a medium and a reasonably high degree where the average consumer is a business. I will assess the likelihood of confusion from the perspective of the general public since they are the group who will pay the lower degree of attention.[5] The services are likely to be obtained by visiting the service provider's physical premises or by visiting their website. Therefore, visual considerations are likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase of services through advice sought from a sales assistant or representative, and word-of-mouth recommendations.

[5] Case T-356/14, [25] – [26].

COMPARISON OF TRADE MARKS

36. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgement 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".

37. 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 trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

38. The trade marks to be compared are as follows:

The Opponent's marks	**The Applicant's mark**

UK00002525359 **SKY** **UK00003859806** (series of 2) 	**USKY**

39. The Opponent contends that its earlier '359 mark consists solely of the word 'SKY' without any stylisation, and that 'SKY' is also the sole verbal element of its '806 mark. It submits that the Application therefore contains its '359 mark in its entirety and contains the sole verbal element of its '806 mark. Further, it argues that the 'SKY' element in the Applicant's mark retains an independent distinctive role within the Application. The Opponent also submits that because the Applicant's mark reproduces the element 'SKY', it is visually, phonetically and conceptually highly similar to its marks. It states that consumers will largely overlook or disregard the term 'U' and focus on 'SKY' as the dominant and distinctive element of the mark, adding that the fact that the marks share this element means that the marks are clearly highly similar. The Opponent continues by submitting that the average consumer will break down the Applicant's mark into 'U' and 'SKY' as separate words, with the mark being pronounced as 'YOU – SKY', where 'SKY' is identically articulated in all marks and the pronunciation of 'U' will not change the rhythm and phonetic structure. Finally, the Opponent submits that there is a conceptual link between marks which lies in the coinciding word 'SKY', with the letter 'U' in the Applicant's mark having a limited impact in the sign.

40. The Applicant submits that visually the marks differ significantly in that its mark contains four letters, whereas the Opponent's marks contain three. It states that

the addition of the letter 'U' at the beginning of its marks is particularly impactful, given that consumers tend to focus more on the start of a mark. Additionally, that 'USKY' forms a visually unified and invented expression. Aurally, the Opponent submits that the marks differ in both length and sound pattern, where its mark is pronounced 'YOU-SKY' (two syllables) while the Opponent's marks are pronounced as a single syllable (SKY). It states that the additional letter 'U' introduces a distinct sound that modifies the rhythm and phonetic structure of the mark. Finally, the Applicant submits that the marks are conceptually dissimilar. It states that the Opponent's mark 'SKY' is a commonly understood English word that immediately evokes the idea of the atmosphere or heavens, whereas its mark 'USKY' is a fanciful, invented term with no dictionary definition or no obvious meaning, that does not convey any direct concept or idea.

Overall Impression

41. The Opponent's '359 mark consists of the single word 'SKY'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself.

42. The Opponent's '806 registration has been registered as a series of two marks, pursuant to Section 41(2) of the Act. The marks consist of the word 'SKY' presented in a minimally stylised typeface. The first mark in the series has been presented in a gradient scale of colours, starting from orange, blending to red, to pink, to purple, and to blue. The second mark is presented in greyscale. Despite this limited stylisation, the dominant impression of both marks remains the word 'SKY' itself.

43. Whilst I note the Opponent's submissions that the Applicant's mark would be perceived as two separate elements 'U' and 'SKY', I do not agree. In my view, the Applicant's mark consists of the invented word 'USKY'. There are no other elements in the mark to contribute to its overall impression, which lies in the word itself. The Applicant's mark will be perceived a single unitary word and would not be split up into two component parts.

Visual Comparison

44. Both of the Opponent's marks consist of three letters, whereas the Applicant's mark contains four. While the Opponent's mark is wholly subsumed within the Applicant's mark, this occurs only after the initial letter 'U'. This point of divergence is at the beginning of the mark, a position which is generally regarded as having a greater impact on the consumer. [6] As such, it represents a noticeable visual difference which alters the overall appearance of the marks. Considering the marks as a whole, I find them to be visually similar to no more than a medium degree. Furthermore, although the stylisation of the Opponent's '806' mark is minimal, it is unlikely to go unnoticed. Consequently, the visual differences between the marks are more pronounced in respect of these stylised versions.

Aural Comparison

45. Aurally, the Opponent's marks consist solely of the dictionary word 'SKY', which will be pronounced in the usual way as a single syllable. I note the parties' submissions that the Applicant's mark will be articulated as 'YOU-SKY', thereby comprising two syllables, with the letter 'U' pronounced in the same manner as the word 'you', however I do not agree. It is my view that a significant proportion of consumers will instead pronounce the Applicant's mark as a single word, 'USKY', in a manner comparable to the ending of the word 'husky'. I reach this conclusion because, when viewed in isolation, the Applicant's mark does not present a natural or obvious break which would encourage it to be split into two component parts. In such circumstances, consumers are more likely to articulate it as a single unit and therefore, I find the marks to be aurally dissimilar.

Conceptual Comparison

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

46. The Opponent's marks consist of the word 'SKY' which would be immediately understood by the average consumer as the broad expanse visible above the earth, in which clouds, the sun, the moon and stars appear. The stylisation in the Opponent's '806 mark does not convey any concept. On the other hand, it is my view that the Applicant's mark would be perceived as an invented word which does not convey an immediate meaning. I say this because the Applicant's mark does not break down into obvious or intelligible components. Consequently, I consider the marks to be conceptually dissimilar.

DISTINCTIVE CHARACTER OF THE EARLIER TRADE MARKS

47. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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)."

48. The Applicant submits that Opponent's marks feature an inherently low level of distinctive character. It states that 'SKY' is a common English word frequently used in various descriptive or suggestive ways, especially in fields connected with technology, communication or digital services. Notwithstanding this, the Applicant states that the Opponent's marks 'may have a degree of recognition in the UK through use, […] '. [7]

49. Conversely, the Opponent submits that its earlier marks have no meaning in relation to the services in question and are therefore inherently highly distinctive. The Opponent also asserts, in its notice of opposition, that its marks enjoy an enhanced level of distinctive character due to the use it has made of them. It also invites the Tribunal to confirm, as agreed by the parties, that its earlier marks have acquired such enhanced levels of distinctiveness.

50. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Further, the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. Whilst I note the Opponent's invitation to confirm that its marks have acquired enhanced distinctive character, it has not provided any evidence to substantiate its claim. Furthermore, the Applicant does not explicitly concede that the Opponent's marks enjoy an enhanced level of distinctiveness as it states it *'may'* have a degree of recognition in the UK. Consequently, I only have the inherent position to consider.

51. The Opponent's '359 mark consists of the plain word 'SKY' without any additional stylisation or figurative elements. As such, the inherent distinctive

[7] Paragraph 8 of the Applicant's counterstatement.

character rests solely in the word itself. The word 'SKY' is an ordinary and readily understood English dictionary word. It is not descriptive of the services concerned nor is it considered to be related to them. The Opponent's '806 marks contain a small degree of stylisation. However, this stylisation does not materially enhance the distinctive character of those marks. Overall, I therefore find that all of the Opponent's marks possess a medium degree of inherent distinctive character.

LIKELIHOOD OF CONFUSION

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

53. 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 factors are interdependent, and, for instance, a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

54. Throughout the course of this decision, I have determined that:

- I have found that the Applicant's *'Provision of an online marketplace for buyers and sellers of goods and services'* dissimilar, or in the alternative, lowly similar to the Opponent's services. The remaining services of the Applicant are identical to the Opponent's services.

- The average consumer of the respective services can be the general public or business consumers and sometimes both. The purchasing process is mainly visual but aural considerations may play a part. The level of attention paid during the purchasing process varies between medium and reasonably high, depending on the consumer. As stated at paragraph 33 above I will base my assessment on the general consumer due to them paying the lower level of attention during the purchase of the services.

- The level of inherent distinctive character of the Opponent's marks is considered medium.

- The marks at issue are visually similar to no more than a medium degree, and are aurally and conceptually dissimilar.

55. Although I accept that the marks share the same last three letters, the overall visual similarities are no more than medium. When this is considered alongside the aural and conceptual dissimilarity between the marks, I am satisfied that consumers would be able to distinguish between them. Further, I remind myself that while there is no special test which applies to the comparison of 'short' marks [8], I am of the view that in the present case, the shortness of the marks at issue means that the average consumer is more likely to notice the differences. This is especially the case where the difference appears at the beginning of the Applicant's mark, a place which typically has more impact on consumers. Additionally, the Applicant's mark, in my opinion, is likely to be perceived as single, invented unit. In my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers paying at least a medium level of attention, to avoid mistaking the marks for one another, notwithstanding the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to identical services.

[8] See paragraph 44 of *BOSCO*, BL O/301/20.

56. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, Mr 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)."

57. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors.* [9] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.

58. Furthermore, in *Liverpool Gin* 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 [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.

59. Consumers, having recognised the differences between the marks, would not then assume that they are economically linked undertakings. I do not consider it logical that an undertaking would add an additional seemingly arbitrary letter to the beginning of its mark so as to change the word completely; the addition of a letter 'U' in this case. This is especially the case where the consumer perceives the Applicant's mark as a single, invented word. Whilst I appreciate that the *L.A. Sugar* categories (referred to above) are not exhaustive, I do not see any other plausible basis on which to conclude that consumers would see the competing marks as deriving from economically linked undertakings. Consequently, and bearing in mind the comments of Arnold LJ and Mr Mellor Q.C (as he then was) in the preceding paragraph, I do not consider there to be a likelihood of indirect confusion.

[9] *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

Conclusion

60. The opposition has failed in its entirety. Therefore, subject to any successful appeal, the application may proceed to registration for all of the services contained within the specification.

Costs

61. As the Applicant has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023.[10] In the circumstances, I award the Applicant the sum of £250. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Total	**£250**

62. I therefore order **Sky Limited** to pay **Hangzhou BlueSky Brand Management Co., Ltd.** the sum of **£250**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 28th day of April 2026

Oliver Rose'Meyer
For the Registrar

[10] As the proceedings were commenced after 01 February 2023.