

O/0367/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3877600
BY TONSOR MALE GROOMING LTD
TO REGISTER THE TRADE MARK:



IN CLASSES 3, 41 & 44

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 441139
BY AVALONLIGHT

Background and pleadings

1. TONSOR MALE GROOMING LTD (“the applicant”) applied to register the trade mark shown on the front page on 13 February 2023. The mark was published on 3 March 2023.

2. The goods and services applied for are as follows:

Class 3: Hair shampoo; Hair styling waxes; Hair styling spray; Hair shampoos; Hair styling gel; Styling sprays for the hair; Styling paste for hair; Hair texturizers; Hair styling lotions; Hair relaxers; Hair cream; Hair grooming preparations; Hair styling preparations; Hair styling gels; Styling gels for the hair; Hair masks; Hair mascara; Hair bleach; Hair conditioner; Hair pomades; Baby hair conditioner; Hair mousse; Hair colouring; Hair balm; Hair rinses; Hair color; Hair permanent treatments; Hair dye; Wax treatments for the hair; Hair wax; Hair spray; Hair rinses [for cosmetic use]; Mousses [toilettries] for use in styling the hair; Hair bleaches; Hair lotion; Hair cosmetics; Hair care masks; Tints for the hair; Hair fixers; Hairstyling masks; Hair removal and shaving preparations; Hair straightening preparations; Hair chalks; Hair emollients; Hair tonic; Hair gel; Hair lacquers; Hair sprays; Hair care serum; Hair care serums; Hair care lotions; Hair strengthening treatment lotions; Hair care preparations; Hair care creams; Shampoos for human hair; Oil baths for hair care; Hair care agents; Hair care lotions [for cosmetic use]; Hair lotions; Dyes for the hair; Hair dyes; Hair serums; Cosmetic hair care preparations; Hair protection lotions; Hair nourishers; Hair oil; Hair treatment preparations.

Class 41: Education; Health education; Vocational education; Academy education services; Academy services (Education -); Education academy services; Adult education services; Education and training; Education services; Vocational education and training services; Academies [education]; Training and education services; Education and training services; Medical education services; Linguistic education and training services; Education and instruction services; Education, teaching and training; Education services relating to vocational training; Education and instruction; Higher education services.

Class 44: Hair styling; Shampooing of the hair; Hair dressing salon services; Hair salon services; Hair cutting; Hair styling services; Hair treatment; Beauty salons for wig cutting; Hair salon services for men; Hair straightening services; Services of a hair and beauty salon; Hair salon services for women; Rental of hair styling apparatus; Hair perming services; Hair replacement; Cosmetic treatment for the hair; Hair braiding services; Hair restoration; Hair cutting services; Hair salon services for children; Hair coloring services; Salons (Hairdressing -); Hairdressing salons; Hair dyeing services; Hair treatment services.

3. AvalonLight (“the opponent”) opposes the trade mark application. The opposition was filed on 2 June 2023. The opposition is on the basis of section 5(2)(b) of the Trade Marks Act 1994 (the Act) against all of the applied for goods and services.

4. The following marks are relied upon for the oppositions:

UK918081942¹ (“the first earlier mark”)

tonsor

Filing date: 13 June 2019

Registration date: 30 October 2019

Relying on some of the goods and services for which it is registered as follows:

Class 3: Beard balm; Skincare cosmetics; Soaps and gels; Scalp treatments (Non-medicated -); Perfume; Oils for cosmetic purposes; Lacquer for cosmetic purposes; Shaving oils; Hair lotion; Hair and beard colorants; Colouring preparations for cosmetic purposes; Hair removal and shaving preparations; Toilet water; Perfume oils for the manufacture of cosmetic preparations; Lotions

¹ 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 EU trade mark (“EUTM”). As a result, the opponent’s earlier EUTM was automatically converted into a comparable UK trade mark. Comparable UK marks are now recorded on 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.

for beards; Perfumery; Dyes (Cosmetic -); Shampoo; Pastes for cleaning shoes; Cologne; Shaving preparations; Hair and beard colorants; Soaps in liquid form; Shaving stones [astringents]; Cosmetics; Beard oil; Essential oils and aromatic extracts; Face and body masks; After-shave gel; Eau de parfum; Shaving balm; Hair creams; Conditioning preparations for the hair; Body deodorants [perfumery]; Beard care preparations; Hair sprays and hair gels; Shower and bath gel; Make-up preparations; Hair straightening preparations; After-shave preparations; Moist wipes for sanitary and cosmetic purposes; Shaving foam; Body cleaning and beauty care preparations; Shower and bath preparations (cosmetic); Beard dyes; Aftershave balms; Cosmetic creams and lotions; Shaving gel; Perfumed creams; Boot cream; Moustache wax; Perfume water; Hair pomades; Hair care agents; Room scenting sprays; Hair tonic [non-medicated]; Bath foam; Bubble Gel; Tanning preparations; Boot cream; Shaving soap.

Class 41: Entertainment; Organization of exhibitions for cultural or educational purposes; Education; Club services [entertainment or education]; Organisation of competitions [education or entertainment]; Arranging and conducting of colloquiums; Sporting and cultural activities; Providing of training; Workshops (Arranging and conducting of -) [training]; Coaching [training].

Class 44: Tattooing; Beauty care for human beings; Beauty consultancy; Barbers; Beauty care and grooming of beards; Beauty salons; Cosmetic treatments for the face and beard; Hairdressing and barbering; Tattoo parlors; Human hygiene and beauty care; Manicuring; Visagists' services; Services for the care of the hair; Cosmetic treatment services for the body, face and hair; Hair cutting; Services for the care of the scalp; Face and beard care; Depilatory treatment; Skin care salons; Tanning salons; Hair salon services; Cosmetic body care services.

UK918081935 ('the second earlier mark')

Tonsor & Cie

Filing date: 13 June 2019

Registration date: 30 October 2019

Relying on all of the goods and services for which it is registered as follows:

Class 3: Beard balm; Skincare cosmetics; Soaps and gels; Scalp treatments (Non-medicated -); Perfume; Oils for cosmetic purposes; Lacquer for cosmetic purposes; Shaving oils; Hair lotion; Hair or beard dyes and colorants; Colouring preparations for cosmetic purposes; Hair removal and shaving preparations; Toilet water; Perfume oils for the manufacture of cosmetic preparations; Lotions for beards; Perfumery; Dyes (Cosmetic -); Shampoo; Cologne; Shaving preparations; Soaps in liquid form; Shaving stones [astringents]; Cosmetics; Beard oil; Essential oils and aromatic extracts; Face and body masks; After-shave gel; Eau de parfum; Shaving balm; Hair creams; Conditioning preparations for the hair; Body deodorants [perfumery]; Beard care preparations; Hair sprays and hair gels; Shower and bath gel; Make-up preparations; After-shave preparations; Moist wipes for sanitary and cosmetic purposes; Shaving foam; Body cleaning and beauty care preparations; Shower and bath preparations (cosmetic); Beard dyes; Aftershave balms; Cosmetic creams and lotions; Shaving gel; Perfumed creams; Perfume water; Hair pomades; Hair care agents; Room scenting sprays; Hair tonic [non-medicated]; Bath foam; Bubble Gel; Tanning preparations; Shaving soap; Boot cream; Boot cream; Moustache wax; Hair straightening preparations; Pastes for cleaning shoes.

Class 44: Beauty care for human beings; Beauty consultancy; Barbers; Beauty care and grooming of beards; Beauty salons; Hairdressing and barbering; Human hygiene and beauty care; Manicuring; Visagists' services; Services for the care of the hair; Cosmetic treatments for the face and beard; Hair cutting; Services for the care of the scalp; Face and beard care; Depilatory treatment;

Skin care salons; Tanning salons; Hair salon services; Cosmetic body care services; Tattooing; Tattoo parlors; Cosmetic treatment services for the body, face and hair.

5. The opponent argues that the respective marks are aurally, visually and conceptually highly similar and that the goods and services are either identical or highly similar.

6. The applicant filed a counterstatement denying the similarity between the marks. They did not address the similarity of the goods and services at issue. I will address this further later in my decision.

7. The applicant filed inadmissible evidence in these proceedings. They were informed that the evidence was not admissible and given opportunity to amend and refile. They did not refile the evidence and, therefore, the documents filed were struck out and I have not considered them in determining this matter.

8. The applicant represents themselves and the opponent is represented by Potter Clarkson LLP.² No hearing was requested but the opponent filed submissions in lieu. I therefore make this decision following careful consideration of the papers.

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

² At the commencement of proceedings the applicant was legally represented however, legal representation was removed following receipt of the Form TM8 and counterstatement.

Decision

Section 5(2)(b)

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

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

(a) [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

11. The opponent’s marks qualify as earlier marks, in accordance with section 6 of the Act. As the earlier marks have not been registered for five years or more before the application date of the contested mark, they are not subject to proof of use requirements. Therefore, the opponent can rely upon all of the goods and services identified in its Form TM7.

Case law

12. 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 be dominated by one or more of its components;

(f) however, it is also 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 great 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;

(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 marks

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

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

14. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

15. For reasons that will become clear later on in my decision, I will focus my comparison initially on the first earlier mark only. The respective trade marks are shown below:

Contested Mark	First Earlier Mark
	<p data-bbox="997 421 1200 481" style="text-align: center;">tonsor</p>

16. The earlier mark is a word mark comprising of one word and the overall impression therefore lies in that word.

17. The contested mark has the word 'TONSOR' in large standard typeface with the words 'MALE GROOMING' underneath. The 'MALE GROOMING' element is far smaller than the 'TONSOR' element. Surrounding the word 'TONSOR' is an incomplete black rectangle. Due to the placement and sizing, 'TONSOR' is the dominant and distinctive element. Due to its size and placement (and that it is descriptive of at least some of the goods and services) 'MALE GROOMING' will play a much lesser role in the mark. The black rectangle element will also play a smaller role.

18. Visually, both marks overlap in the word 'TONSOR' with the differences being the inclusion of the rectangle device and the words 'MALE GROOMING'. I do note that the earlier mark is a word mark and that normal and fair use of a word marks means that they may be used in any standard typeface, singular colour and in upper and lower-case lettering. I therefore find that the marks are visually similar to a medium degree.

19. Turning next to the aural comparison, the 'TONSOR' element of the marks is aurally identical. Following the guidance from Phillip Johnson as the Appointed Person in *Enrich Learning* BL O/1141/25, I consider that it is possible that the average consumer might not articulate the 'male grooming' element of the contested mark

where it is descriptive/allusive of the goods and services, particularly given its much smaller font size and placement. For those consumers, the marks are aurally identical. I do not discount however, that it might still be spoken by some consumers (particularly where that element does not have a descriptive/allusive link to the goods and services) and in that case, as it has no replica in the earlier mark, I consider the marks to be aurally similar to at least a medium degree.

20. I note within the Form TM8 and counterstatement that the applicant mentions that “Tonsor is a noun and describes a particular service”. Within their submissions the opponent states that ‘TONSOR’ is “derived from Latin, meaning barber or hairdresser which will not be commonly understood by the relevant UK consumer”.³

21. I agree with the opponent that, although the word might derive from Latin, it will not be readily understood by the average UK consumer. Therefore, I consider that the Tonsor elements of the marks are conceptually neutral. The ‘male grooming’ element (which refers to things such as haircuts, shaving, beard trimming, skincare etc for men) will serve as a point of conceptual difference as it has no replica in the earlier mark.

Distinctive Character of the Earlier Mark

22. 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).

³ Paragraph 16

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).”

23. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. I have been provided with no such evidence and, therefore, only have the inherent position to consider.

24. As discussed above, I note that the word ‘TONSOR’ might come from Latin and mean barber or hairdresser however, this would not be readily understood by the average UK consumer and therefore, they would believe it to be an invented term with no connection to the goods and services registered. I therefore consider that the earlier mark is inherently distinctive to a high degree.

Comparison of Goods and Services

25. As stated above, within their Form TM7 the opponent claimed that the goods and services at issue are “either identical or highly similar”. The applicant did not address this claim within their Form TM8 and counterstatement. On 24 February 2024, the Registry wrote to the parties and requested that the applicant file an amended Form TM8. They were advised within that letter that if they did not amend the form and counterstatement then the parts of their defence which were not adequately particularised would be struck out. Two further letters were sent reminding the applicant of this on 11 March 2024 and 23 April 2024 respectively.

26. No response was received from the applicant so on 11 June 2024 the Registry sent a letter to the parties advising that the claims regarding the goods and services would be deemed as being admitted. A deadline of 25 June 2024 was given to challenge this, however, no request to challenge was received.

27. The following goods from the applicant's specification are found identically within the opponent's specification (either self-evidently or under the principle set out in *Gérard Meric v OHIM* ('Meric'), Case T-133/05):⁴

Class 3: Hair shampoo; Hair styling spray; Hair shampoos; Hair styling gel; Styling sprays for the hair; Hair styling lotions; Hair cream; Hair styling gels; Styling gels for the hair; Hair masks; Hair mascara; Hair conditioner; Baby hair conditioner; Hair colouring; Hair color; Hair dye; Hair spray; Hair lotion; Hair cosmetics; Hair care masks; Tints for the hair; Hair removal and shaving preparations; Hair straightening preparations; Hair tonic; Hair gel; Hair sprays; Hair care lotions; Hair strengthening treatment lotions; Hair care preparations; Hair care creams; Shampoos for human hair; Hair care lotions [for cosmetic use]; Hair lotions; Dyes for the hair; Hair dyes; Hair protection lotions; Hair grooming preparations; Hair styling preparations; Hair rinses; Hair balm; Hair fixers;

Class 41: Education; Health education; Vocational education; Academy education services; Academy services (Education -); Education academy services; Adult education services; Education and training; Education services; Vocational education and training services; Academies [education]; Training and education services; Education and training services; Medical education services; Linguistic education and training services; Education and instruction

⁴ "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".

services; Education, teaching and training; Education services relating to vocational training; Education and instruction; Higher education services.

Class 44: Hair styling; Shampooing of the hair; Hair dressing salon services; Hair salon services; Hair cutting; Hair styling services; Hair treatment; Beauty salons for wig cutting; Hair salon services for men; Hair straightening services; Services of a hair and beauty salon; Hair salon services for women; Hair perming services; Cosmetic treatment for the hair; Hair braiding services; Hair cutting services; Hair salon services for children; Hair coloring services; Salons (Hairdressing -); Hairdressing salons; Hair dyeing services; Hair treatment services.

28. For the remaining goods and services, as no challenge was made to the Registry's letter of 11 June 2024, I consider that the applicant has admitted that they are similar to a high degree.

Average consumer and the purchasing act

29. 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.

30. 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.

31. I believe that the average consumer of the goods and services are likely to be the general public (although I do not discount professional/business consumers, particularly in relation to the class 41 services). The costs of these goods are likely to vary greatly between low (for items like hair spray and shampoo) and high cost (for things such as education and training services). The average consumer is likely to consider factors such as cost, ingredients, quality and reputation when selecting the goods and services. For the class 3 goods and some of the class 44 services, they are likely to be relatively frequent purchases, with class 41 services being less frequent. I consider that the average consumer will pay an average degree of attention when selecting the goods and services at issue.

32. The selection process will involve mainly visual considerations, with consumers being exposed to the marks in-store in retail outlets, online, or via advertising.

Likelihood of Confusion

33. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

34. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree and aurally similar to at least a medium degree (or identical for those consumers who do not pronounce the 'male grooming' element).
- The tonsor element of the marks is conceptually neutral with the 'male grooming' element being a point of conceptual difference.
- The earlier mark is a word mark comprising of a single word. 'tonsor', and therefore, that is where the overall impression lies.
- The dominant and distinctive element of the contested mark is the word 'TONSOR' with the further wording and rectangle playing lesser roles.

- I consider that the average consumer is likely to be the general public (although I do not discount professional/business consumers) I have concluded that an average level of attention will be paid during the purchasing process.
- The applicant admitted that the goods and services were identical/highly similar.
- The earlier mark is inherently distinctive to between a high degree.

35. Due to the identical and highly similar goods and services, together with the level of visual and aural similarities, in particular, the same dominant and distinctive components, I find that the average consumer is unlikely to recall the marks accurately and may not remember that one of them contains a rectangle and two much smaller words. They are likely to mistake one mark for the other even though the marks are conceptually neutral. Consequently, I find there to be a likelihood of direct confusion between the marks.

36. In the event that I am wrong in finding there to be a likelihood of direct confusion, I will now go on to consider whether there could be indirect confusion. Mr Iain Purvis Q.C. (as he then was) said further in *L.A. Sugar Limited v Back Beat Inc*:

“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).”

37. These examples are not exhaustive but provide helpful focus, as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

“This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.”⁵

38. In the case of indirect confusion, the average consumer has noticed the differences between the marks but still believes them to be linked. The difference that the average consumer might notice in this case is the stylisation and inclusion of the device/‘male grooming’ of the contested mark. However, the distinctive and dominant components of the marks are the same, leading the average consumer to view the additional device and wording as a brand refresh, or variation. Therefore, I find that indirect confusion is likely to occur.

Conclusion

39. The opposition has been successful in its entirety and the application is refused, subject to any appeal.

40. As the second earlier mark would not put the opponent in a better position, I will not consider it any further.

⁵ Paragraph 12

Costs

41. The opponent has been successful and is entitled to a contribution towards its costs. Award of costs are governed by Annex A of Tribunal Practice Notice (“TPN”) 2/2023. In accordance with that TPN, I award the opponent the sum of **£700**, calculated as follows:

Official fee	£100
Preparing the Notice of Opposition and Considering the counterstatement	£250
Preparing submissions in lieu	£350

42. I order TONSOR MALE GROOMING LTD to pay AvalonLight the sum of £700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of April 2026

L Nicholas
For the Registrar