

O/0395/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 3839652

BY

KINSLEY TECHNOLOGY CO., LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

Dream Rite

IN CLASS 20

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 438907

BY DREAMS LIMITED

BACKGROUND & PLEADINGS

1. On 17 October 2022, Kinsley Technology Co., Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the contested mark”). The contested mark was published for opposition purposes in the Trade Marks Journal on 28 October 2022 in respect of the following goods:

Class 20: Beds, bedding, mattresses, pillows and cushions; Stuffed pillows; Pillows.

2. On 30 January 2023, the contested mark was opposed in its entirety by Dreams Limited (“the opponent”). The opposition was brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. A decision was issued by a different Hearing Officer on 24 July 2024.¹ In that decision, the Hearing Officer found that the opposition failed under section 5(2)(b) of the Act. That decision was subject to an appeal which culminated in the decision of Ms Emma Himsworth KC, sitting as the Appointed Person, issued on 16 April 2025.² In that decision, Ms Himsworth stated as follows:

“27. For the reasons set out above it seems to me that the appeal should be allowed and that the Decision and the Hearing Officer’s order as to costs should be set aside.

28. I should make it clear that it would not be right for me to say anything about the merits of the Decision that I have ordered to be set aside. To make any observations would only compound the errors that I have identified above and accordingly I have not done so. Accordingly, nothing in this decision should be read as binding the future decision of the Hearing Officer in any way.

¹ BL O/0702/24

² BL O/0364/25

29. The opposition is remitted to the Registrar for further consideration by a different Hearing Officer, in accordance with the provisions of the Trade Marks Act 1994 and the Trade Mark Rules 2008.

30. The costs of the proceedings to date (including the costs of this appeal) are reserved to the Registrar upon the basis that the question of how and by whom they are to be borne and paid will be determined at the conclusion of the opposition in accordance with the usual practice.”

4. This decision is, therefore, to undertake a further consideration of the opposition. In that regard, the opponent relies upon the following three trade marks (together “the earlier marks”):

(i) Trade mark number UK00917963494 (“the DREAMS mark”):³

Filing date: 1 October 2018

Registration date: 15 February 2019

Relying on goods and services listed in Annex 1 of this decision.

Representation: DREAMS

(ii) Trade mark number UK00003453941 (“the DREAM BIGGER mark”):

Filing date: 24 December 2019

Registration date: 20 March 2020

Relying on all goods and services listed in Annex 2 of this decision.

Representation: DREAM BIGGER

(iii) Trade mark number UK00918169119 (“the DREAM COACH mark”):⁴

Filing date: 19 December 2019

Registration date: 22 May 2020

Relying on all goods and services listed in Annex 3 of this decision.

Representation: DREAM COACH

³ This mark is a comparable mark and so retains the filing date of the EU trade mark from which it was created. On the UK trade mark register, the corresponding EU trade mark to which this comparable mark responds is said to be subject to invalidation or revocation action. However, the opponent confirmed to the Tribunal on 6 December 2023 that the proceedings in the EUIPO had concluded and the EU trade mark (and, therefore, the comparable mark) remain registered and unaltered. The EUIPO register confirms the same.

⁴ This mark is a comparable mark and so retains the filing date of the EU trade mark from which it was created.

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

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

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

6. The marks identified in paragraph 4 qualify as earlier trade marks under the above provisions. It is noted that the earlier marks had not been protected for more than five years at the date of the application for the contested mark and so, in accordance with section 6A of the Act, the marks are not subject to proof of use. Consequently, the opponent may rely on all of the goods and services listed in annexes 1 to 3 of this decision for the purpose of this opposition.
7. The opponent submits that the marks in issue are “highly similar” and that the goods and services in issue are identical or “related”. Consequently, the opponent submits that “there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier mark.” The opponent therefore requests that the application is refused.
8. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant submits that there are sufficient visual and phonetic differences between the marks in issue to allow its differentiation by consumers. Whilst the applicant concedes that there is “low similarity between the goods in question”, it submits that “taking into account all the relevant factors it cannot be regarded that there is a likelihood of confusion within the meaning of Section 5(2)(b) of the Act”. The applicant therefore requests that the opposition should be rejected and that an award of costs should be made in its favour.
9. The opponent is represented by Abion UK Limited, and the applicant is represented by Marcin Ociepa. In this case, neither party filed evidence. No

hearing was requested, and only the opponent filed written submissions in lieu of a hearing (on 15 February 2024 and on 24 October 2025). This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

10. 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)

11. This opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“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”.

12. Section 5A of the Act stipulates that where “grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

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

14. As outlined above, the opponent opposes the applicant's registration of the contested mark in respect of the following goods:

Class 20: Beds, bedding, mattresses, pillows and cushions; Stuffed pillows; Pillows.

15. The opponent submits that the applicant's above referenced goods are identical or similar to the goods and services listed in annexes 1 to 3.
16. As discussed above, the applicant admits that there is a low level of similarity between the goods in issue. Whilst this concession is noted, it still remains necessary for me to undertake an assessment of the extent of similarity or identity between the goods and services in issue.

17. As a preliminary point, it should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification⁵, or dissimilar on the ground that they appear in different classes under the Nice Classification.
18. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*,⁶ the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “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”.
19. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case⁷, for assessing similarity were:
 - a. The uses of the respective goods and services;
 - b. The users of the respective goods and services;
 - c. The physical nature of the goods and services;
 - d. The respective trade channels through which the goods and 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 and services are competitive. This inquiry may take into account how those in trade classify goods, for instance

⁵ “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.

⁶ Case C-39/97

⁷ [1996] R.P.C. 281

whether market research companies, who of course act for industry, put the goods in the same or different sectors.

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*,⁸ the General Court (“GC”) confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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.”

21. As per the case of *Separode*,⁹ I also bear in mind that it is permissible to group the goods and/or services together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

Class 20

Beds, mattresses, pillows [...]; Pillows.

22. The above goods all appear in the specifications for all of the marks relied upon. Accordingly, all of the above referenced goods are self-evidently identical.

Bedding

23. I compare the applicant’s “bedding” with the opponent’s “bedding, other than bed linen”, which appears in all of the earlier marks’ specifications. Whilst the opponent’s term is limited, it clearly falls within the applicant’s wider term

⁸ Case T- 133/05

⁹ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

“Bedding”. Consequently, these goods are therefore identical in line with the principle established in *Meric*.

Stuffed pillows

24. I compare the applicant’s “stuffed pillows” with the opponent’s term “pillows”, which appears in all of the earlier marks’ specifications. I consider that the applicant’s “stuffed pillows” would fall within the opponent’s wider term “pillows”, and I therefore find these goods to be identical in line with the principle established in *Meric*.

Cushions

25. I also compare the applicant’s “cushions” with the opponent’s “pillows”. These goods overlap in nature and general purpose, being soft furnishing articles intended to provide comfort and support when sitting and lying down, albeit they differ in specific purpose with pillows traditionally being utilised to provide support to the head or neck when sleeping, whereas cushions are traditionally utilised to offer support when sitting, or as a decorative feature.

26. These goods overlap in user (being members of the general public) and trade channels, with both being sold in homeware/furniture stores or bedding retailers. Given their differing specific purpose, I do not consider that you would purchase one in the place of the other. I do not therefore consider them to be competitive. I can also see no basis for finding them to be complementary. However, overall, I find these goods to be similar to a high degree.

Average consumer and the purchasing act

27. 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 and services in question (see *Lloyd Schuhfabrik Meyer*¹⁰).

28. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, 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

¹⁰ Case C-342/97

must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

29. As outlined above, the average consumer of the goods in issue will be members of the general public. Most of the goods in issue will be sold in retail outlets (from outlets selling homeware/furniture or bedding goods) through self-selection, or from their online equivalents. The purchasing process for all of the goods will therefore be dominated primarily by visual considerations, but I do not discount that aural considerations will also play a part as advice may be sought from sales assistants or through verbal recommendations.
30. The opponent submits that the “level of attention for all of the relevant goods is generally low given these goods are commonly available in a wide-variety of shops and online marketplaces” and that “none of the goods covered are of a particular high value”. Whilst I accept that this might be the case for some of the goods, for example, pillow or cushion goods, I note that “beds” and “mattresses” can vary significantly in price. The frequency of purchase of these goods will also vary significantly, albeit I do not consider any of the goods to be items that you would purchase frequently. For the higher price mattress and bed goods, these are likely to be purchased and not replaced for several years. Even in respect of the lower price bedding and pillow goods, I consider that these are only likely to be purchased as and when they require replacing (every few years or so). I also consider that average consumers are likely to be conscious of factors such as the style, material, suitability and price for all of the goods in issue, all of which suggest that a medium level of attention would be paid by the average consumer during the purchasing process.

Comparison of marks

31. 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 *Bimbo SA v OHIM*,¹¹ 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.”

32. 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.

33. The respective trade marks are shown below:

Earlier marks	Contested mark
DREAMS	Dream Rite
DREAM BIGGER	

¹¹ Case C-591/12P

DREAM COACH	
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34. As discussed above, the opponent submits that the marks in issue are visually, phonetically and conceptually highly similar, given their shared use of 'DREAM' as the dominant and distinctive element, and that the additional 'RITE' element in the contested mark is "insufficient to distinguish the marks as a whole", and that consumers place more emphasis on the beginning of a mark with more than one element.
35. By contrast, the applicant submits that the marks in issue are "globally sufficiently dissimilar due to their different distinctive elements, different letters, different number of letters and overall different structures".

Overall Impression:

36. All of the marks in issue are word only marks. There are no other elements which contribute to the marks' overall impression, so the overall impression for all of the marks in issue rests in the words themselves. The opponent's DREAM BIGGER and DREAM COACH marks, and the applicant's contested mark, are all comprised of two-words. I consider that the two words hang together in all of these marks, and that both words in each mark contribute equally to the marks' overall impression. Whilst I appreciate that the beginnings of marks tend to have more visual and aural impact than the ends,¹² I note that this is not always the case, and I do not consider that to be the case in respect of the contested mark or the earlier DREAM BIGGER and DREAM COACH marks.

¹² *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Comparison with the contested mark:

THE DREAMS MARK:

37. Visually, the opponent's above referenced mark and the contested mark overlap in their use of their first five letters "DREAM". The opponent's above referenced mark also has an additional "S" which is not present in the contested mark, and the contested mark has the additional word "Rite", which is not present in the above referenced earlier mark. Weighing up all of the above, I consider the marks to be visually similar to a medium degree.
38. Aurally, as outlined above, the marks overlap in their first five letters, which will be pronounced as the word "DREAM" in both marks, but they differ in the presence of the "S" in the contested mark, and the word "rite" in the earlier mark. The above referenced contested mark is therefore just one syllable in length, whereas the earlier mark will be two syllables. Weighing up these similarities and differences, I consider the marks to be aurally similar to a medium degree.
39. I now turn to a conceptual comparison of these marks. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.¹³ The assessment must, therefore, be made from the point of view of the average consumer.
40. I am also conscious of the findings of the GC in *Usinor SA v OHIM*,¹⁴ that "as regards the conceptual comparison, it must be noted that while the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Lloyd Schuhfabrik Meyer*, paragraph 25), he will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for him, suggest a concrete meaning or which resemble words known to him".

¹³ [2006] ECR I-643; [2006] E.T.M.R

¹⁴ Case T-189/05

41. In this instance, both marks utilise the word “DREAM”, albeit the above referenced earlier mark also has an “S” at the end, which results in it being the pluralised version of the word “DREAM”. I consider the words “DREAM” and “DREAMS” to have two ordinary meanings, that being either the images or thoughts experienced involuntarily during sleep, or an ambition or aspiration. Whilst I appreciate that conceptual comparisons are usually done without reference to the goods at issue,¹⁵ the consumer does look to the goods to inform the meaning of the mark, particularly where there is a link between the conceptual meaning of the mark and the goods to which it is affixed.¹⁶ I find this to be the case in this instance, given that the goods for which I have found similarity are goods utilised in the course of sleep and to dress or make a bed. Consequently, I find that the average consumer will understand the words “Dream” or “DREAMS” in both marks to be a reference to the first meaning identified above (i.e., the images or thoughts experienced involuntarily during sleep).
42. As outlined above, the contested mark also contains the word “Rite” which I consider will be understood by the average consumer as a misspelling of the word “Right”, meaning to be correct. Combined, the conceptual meaning I consider the average consumer will attribute to the contested mark is to dream correctly.
43. In comparing these two marks, I find that the shared concept of “Dream/s” will be considerable, but the addition of the word “Rite” is a point of conceptual difference, as it has no counterpart in the above referenced earlier mark. Overall, I therefore consider these marks to be conceptually similar to a medium degree.

THE DREAM BIGGER MARK

¹⁵ EMILIANA, Case BL O/052/22.

¹⁶ LIGHT VITAMIN, Case BL O/1174/25.

44. Visually, the marks overlap in their use of the first word “DREAM” but differ in their second word, which is also the longest element of the mark. Noting this, I consider the compared marks to be visually similar to a medium degree.
45. As outlined above, both marks overlap in their first word which will be pronounced identically in both marks. However, the contested mark also has the word “Rite”, which is not present in the earlier mark, and the above referenced earlier mark contains the word “BIGGER” which is not present in the contested mark. Consequently, the above referenced earlier mark will be pronounced as three syllables, whereas the contested mark will be pronounced as two syllables. Noting all of the above, I consider there to be a medium degree of aural similarity between these compared marks.
46. The concept of the contested mark will be as outlined in paragraph 41 above. The above referenced earlier mark also contains the word “DREAM”, and the conceptual meaning of that word within the above referenced earlier mark will also be as identified in paragraph 41 above. However, the above referenced earlier mark also contains the word “BIGGER”, which I consider will be given its ordinary meaning (namely, to be larger than some form of comparator). Together, the conceptual meaning I consider the average consumer will attribute to the above referenced mark is to dream to a larger/greater extent (i.e., to dream more).
47. Overall, in comparing these two marks, I, once again, find that the shared concept of “Dream” will be considerable. However, the addition of the words “Rite” and “Bigger” in the compared marks are points of conceptual difference. Overall, I therefore consider these marks to be conceptually similar to a medium degree.

THE DREAM COACH MARK

48. Visually, the marks overlap in their use of the first word “DREAM” but differ in their second word. Noting this, I consider the compared marks to be visually similar to a medium degree.
49. As outlined above, both marks overlap in their first word “DREAM”, which will be pronounced identically in both marks. However, the contested mark also has the word “Rite”, which has no counterpart in the above referenced earlier mark, and the above referenced earlier mark contains the word “COACH” which is not present in the contested mark. Noting all of the above, I consider there to be a medium degree of aural similarity between these compared marks.
50. The concept of the contested mark will be as outlined in paragraph 41 above. The above referenced earlier mark also contains the word “DREAM”, and the conceptual meaning of that word within the above referenced earlier mark will also be as identified in paragraph 41 above. However, the above referenced earlier mark also contains the word “COACH”, which I consider will be given its ordinary meaning (namely, someone or something which assists with improving, through training or teaching, a specific skill). Together, the conceptual meaning I consider the average consumer will attribute to the above referenced mark is something which improves your dreams/sleep.
51. Overall, in comparing these two marks, I, once again, find that the shared concept of “Dream” will be considerable. However, the addition of the words “Rite” and “COACH” in the compared marks are points of conceptual difference, Overall, I therefore consider these marks to be conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

52. In *Lloyd Schuhfabrik Meyer* 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 C108/97 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).”

53. Whilst the distinctiveness of a mark may be enhanced as a result of it being used in the market, in this instance the opponent has admitted that there has been no use of the mark to date. Consequently, I have only the inherent position to consider.

54. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the goods/services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are “invented” words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.

55. The applicant submits that the word “DREAM” should not be regarded as being distinctive in connection with the goods in issue because “it indicates the intended purpose of the goods”. The applicant also submits that the term “DREAM” is “commonly used” and that a search of the database TM VIEW made on 22 March 2023 resulted in 374 UK trade mark registrations utilising the word “DREAM” in different combinations for class 20 goods.
56. Evidence that third parties use similar signs may reduce the distinctiveness of a trade mark. In *Lifestyle Equities CV & Ors v Royal County of Berkshire Polo Club Ltd & Ors*,¹⁷ Arnold LJ stipulated that “experience shows that third party use of similar signs does tend to diminish the distinctiveness of a trade mark. In a crowded market it is harder for one mark to stand out”. However, it is not sufficient to just show that there are marks registered for goods in the relevant field, evidence of use of those marks in the relevant field is necessary.¹⁸ I have not been provided with such evidence in this instance and cannot therefore make such a determination.
57. The opponent submits that the earlier marks are “inherently distinctive to between a low to medium degree for bed and bedding related terms and distinctive to a medium degree for all other goods and services”. In support of its submission, the opponent refers to a number of previous decisions of the UK IPO Tribunal and a prior decision of the EU IPO. It is noted that all of those proceedings concerned prior disputes between the opponent and third parties (i.e., not the applicant), and the opponent appears to have attributed a great deal of weight to the findings of those decisions as to the level of inherent distinctive character in the word “DREAM”. Whilst it is important to note the contents and findings of previous decisions, decisions of the UK IPO Tribunal or the EU IPO are not binding authority on subsequent UK IPO Tribunal Hearing Officer decisions.
58. In that regard, I note the comments of Mr James Mellor KC sitting as the Appointed Person in *Ants R Us*,¹⁹ that:

¹⁷ [2024] EWCA Civ 814

¹⁸ *Zero Industry Srl v OHIM*, Case T-400/06

¹⁹ BL O/478/20

“32. In paragraph 29, it can be seen that the Hearing Officer took the view that ‘R US’ was not ‘particularly distinctive in itself’ and also that it was ‘inherently weakly distinctive’. This is the only point in the Decision which has given me pause for thought. In this regard, I refer to the prior decisions to which the Appellant draws attention – namely O/213/03 TOYS AREN’T US at §37, and O/224/06 ‘WINDOWS “R” US’ at §17 – in which it asserts it was held that the element ‘R US’ and TOYS R US are distinctive. In both sets of proceedings, the Opponent relied on various UK and Community Trade Marks, including a CTM for ‘R US’. The first case was an opposition which succeeded but only under ss5(3) and 3(6), and failed under s.5(4)(a), the second was an invalidity claim which failed in its entirety including under s.5(4)(a). The circumstances of each were different in material respects to the situation in this opposition, and neither decision establishes the propositions advanced, at least not without some qualification. Although a measure of consistency in the assessment of marks is desirable, it is not mandatory. In any event, the Hearing Officer had to decide this opposition on the basis of the evidence before her.” (my emphasis added)

59. As has been clearly established, each case must be assessed on its own merits and, as such, I do not consider it appropriate to derive my findings or conclusions wholly from the decisions to which the opponent refers. My determination of each of the opponent’s claims (including the level of inherent distinctive character attributable to the word “DREAM”) must take into account all the relevant factors, following an assessment of the papers before me.
60. Noting the above, in relation to the DREAMS mark, I do consider the words “DREAM” and “DREAMS” (given that it is just a pluralised version of the word “DREAM”) to be allusive of the goods for which I have found similarity (i.e., goods used to prepare or dress a bed) as dreams are what one has whilst asleep, and beds are generally where consumers will sleep. That being said, I am required to attribute at least some distinctiveness to the earlier marks by virtue of it being

registered.²⁰ Consequently, I find the word “DREAMS” to have a fairly low level of inherent distinctive character (i.e., between a low and medium degree).

61. In relation to the DREAM BIGGER mark, for the reasons outlined in paragraph 46 above, I consider that the conceptual meaning the average consumer will attribute to this mark is to dream to a larger/greater extent (i.e., to dream more). Accordingly, for the same reasons outlined in the paragraph above, I also consider the words “DREAM BIGGER” to be allusive of the opponent’s goods for which I have found similarity, and that they are inherently distinctive to between a low and medium degree.
62. In relation to the DREAM COACH mark, for the reasons outlined in paragraph 50 above, I consider that the conceptual meaning the average consumer will attribute to this mark is something which improves your dreams/sleep. Accordingly, for the same reasons outlined in paragraph 60 above, I also consider the words “DREAM COACH” to be allusive of the opponent’s goods for which I have found similarity, and that they are inherently distinctive to between a low and medium degree.

Likelihood Of Confusion

63. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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/services down to the responsible undertakings being the same or related.
64. 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 (see *Sabel*²¹). 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 services and

²⁰ See section 72 of the Act.

²¹ C-251/95, para 22

vice versa (see *Canon*²²). 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.

65. I have found the applicant's goods to be identical or similar to a high degree to the opponent's goods. I have also found all of the earlier marks to be visually, aurally and conceptually similar to a medium degree to the contested mark, and that all of the earlier marks have between a low and medium degree of inherent distinctive character.
66. I have identified that the average consumer for the goods in issue will be members of the general public, who will demonstrate a medium level of attention during the purchasing process. I have also identified that the purchasing process for the goods in issue will be primarily visual in nature, though aural considerations cannot be excluded.
67. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient visual, aural and conceptual differences between the earlier marks and the contested mark to avoid them being mistakenly recalled as each other, particularly given that I have determined that a medium level of attention will be paid by the average consumer during the purchasing process. I make this decision with due consideration of my findings in respect of the identity/high level of similarity between the goods in issue and the interdependency principle. Whilst I appreciate that all of the marks in issue begin with the word "DREAM", and that the beginnings of marks tend to have more visual and aural impact than the ends,²³ I note that this is not always the case, and I do not consider it to be the case in this instance given my finding that the second word in the contested mark and the earlier "DREAM BIGGER" and "DREAM COACH" marks play an equal role in the overall impression of the

²² C-39/97, para 17

²³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

marks. I do not consider that these elements would therefore be mis-remembered when any of the earlier marks are compared to the contested mark.

68. In the light of the above, I do not consider there to be a likelihood of direct confusion.
69. Accordingly, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of all of the marks (the word “DREAM”) and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.
70. Indirect confusion was described in the following terms by Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:²⁴

“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 recognised 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

²⁴ BL O/375/10

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).”

71. 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.²⁵ 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.²⁶ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a “proper basis” for finding indirect confusion.²⁷

72. As outlined above, all of the marks in issue overlap in their first five letters (DREAM). However, I consider the word dream to be allusive of the goods in the parties’ specification that I have found to be similar (i.e., the goods used to prepare or dress a bed) and, accordingly, I consider it to have between a low or medium level of distinctive character. In *Face2FaceHR Partners Limited v Peninsula Business Services Limited*,²⁸ Emma Himsworth K.C., sitting as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd*

²⁵ Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

²⁶ Duebros Limited v Heirler Cenovis GmbH, BL O/547/17

²⁷ Liverpool Gin Distillery and others v Sazerac Brands, LLC and others [2021] EWCA Civ 1207

²⁸ O/0368/23

[2017] EHC 3303 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:

“(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.

(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.

(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.

(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.

(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.

(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”

73. Noting the above, I do not consider there to be a likelihood of indirect confusion between the earlier DREAMS mark and the contested mark. The additional “Rite” element of the contested mark is not insignificant in my view. As outlined above, I consider that it hangs together with the “DREAM” element and plays an equal role within the overall impression of the contested mark. Whilst I note the opponent’s submission that RITE/RIGHT are laudatory terms commonly used by brands, I consider that the misspelling of the word “RIGHT” results in it being more noticeable by the average consumer. Further, the addition of the word

“RITE” also results in the contested mark having a separate unitary conceptual meaning to that of the earlier DREAMS marks. I do not consider that the average consumer would perceive the addition of the word “RITE” (as well as the removal of the “S” in the word “DREAMS”) to be a logical or consistent brand extension or sub-brand of the earlier DREAMS mark, or vice-versa.

74. Further, for the reasons outlined above, I do not consider the coinciding element of the marks in issue (the word “DREAM”) in the context of the goods in issue to be so distinctive that the average consumer would assume that only one undertaking would use it in a trade mark, and I have been provided with no evidence to suggest otherwise. Consequently, it is my view that the use of the word “DREAM” in all of the marks in issue would be perceived as a mere coincidence. Having recognised the differences between the earlier DREAMS mark and the contested mark, I can see no reason why the average consumer would conclude that they originate from the same or economically linked undertakings. Consequently, I do not consider there to be a likelihood of indirect confusion between the earlier DREAMS mark and the contested mark.
75. In relation to the earlier “DREAM BIGGER” and “DREAM COACH” marks, for the reasons I have outlined above, I consider that the two words in these marks hang together (as does the “Dream Rite” in the contested mark). Consequently, I have found that all of the marks have a separate unitary conceptual meaning, despite the common use of the word “Dream”. I can see no basis for finding that replacing the words “BIGGER” or “COACH” with “Rite” (or vice-versa) would be perceived by the average consumer as a logical or consistent brand extension or sub-brand. Given its low to medium level of inherent distinctive character, I consider that the common use of the word “DREAM” in these marks in the context of the goods for which I have found similarity would merely be perceived as coincidental, and I have been provided with no evidence to suggest that this level of distinctive character has been enhanced through use. The differences between the marks are enough, in my view, for the consumers not to be confused, and for the average consumer to determine that the contested mark is simply another undertaking using the word “Dream” for goods relating to beds,

unrelated to the opponent. I also do not therefore consider there to be a likelihood of indirect confusion between these marks.

76. I am fortified in this finding by the words of Lord Simonds in *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39,²⁹ in which he stated that:

“Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion.”

CONCLUSION

77. The opposition fails in its entirety, and the contested mark may, subject to any successful appeal of my decision, proceed to registration for all of the goods it has been applied for.

COSTS

78. In relation to costs, on appeal, the Appointed Person stated as follows:

“The costs of the proceedings to date (including the costs of this appeal) are reserved to the Registrar upon the basis that the question of how and by whom they are to be borne and paid will be determined at the conclusion of the opposition in accordance with the usual practice.”

79. As the applicant has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. I note that the applicant paid no official fees in these proceedings. I also note that there was no evidence in these proceedings, only the opponent filed written submissions, and the applicant did not attend the appeal hearing. In the

²⁹ Whilst this was a passing off case, I consider that the principle also applies in this instance.

circumstances, I award the applicant the sum of £300 for considering the Notice of opposition and preparing the counterstatement.

80. I therefore order Dreams Limited to pay Kinsley Technology Co., Limited the sum of £300. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 7th day of May 2026

B Hartland
For the Registrar

Annex 1

Specification relied upon for the DREAMS mark:

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services relating to the sale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, non-medicated soaps, perfumery, essential oils, non-medicated cosmetics, non-medicated hair lotions, scents, fragrances, oils for perfumes and scents, perfumeries, room scenting sprays, scented fabric refresher sprays, scented linen sprays, scented oils, scented room sprays, air fragrance preparations; Retail services relating to the sale of air fragrance reed diffusers, air fragrancing preparations, aromatics for fragrances, cleaning and fragrancing preparations, Cushions filled with fragrant substances, cushions impregnated with fragrant substances, fragrance for household purposes, fragrance preparations, fragrance refills for non-electric room fragrance dispensers, fragrance sachets, refills for electric room fragrance dispensers, room fragrances, room fragrancing products; Retail services relating to the sale of Scientific, measuring, checking (supervision), life-saving and teaching apparatus and instruments, data processing equipment, computer software, computer hardware, mobiles apps, downloadable software applications, wearable monitors, monitoring instruments,

monitoring apparatus, other than for medical purposes, monitoring units [electric], electronic sensors, bio-sensors, movement sensors; Retail services relating to the sale of sensors for scientific use to be worn by a human to gather human biometric data, electronic tracking apparatus and instruments, wearable activity trackers, measuring apparatus and instruments, computer software in the field of tracking, monitoring and analysing of sleep, movement and heart rate, electronic devices for tracking, monitoring and analysing of sleep, movement and heart rate [other than for medical use]; Retail services relating to the sale of mobiles apps in the field of tracking, monitoring and analysing of sleep, movement and heart rate, downloadable software applications in the field of tracking, monitoring and analysing of sleep, movement and heart rate; Retail services relating to the sale of medical and surgical apparatus and instruments, namely medical devices for sensing, measuring, diagnostic and treatment purposes in the field of sleep including wearable medical devices to be worn while sleeping, Pulse rate monitors, medical devices for measuring sleep, precision sensors for medical use, sensor apparatus for medical use; Retail services relating to the sale of apparatus for lighting, lighting, light bulbs, lamps and light sources, lighting connected to alarm clocks, luminaires, controllable light sources and lighting apparatus, filters for lighting appliances; Retail services relating to the sale of horological and chronometric instruments, clocks, alarm clocks, electronic alarm clocks, alarm clocks which use light to wake-up users, alarm clocks with in-built lights; Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of household or kitchen utensils and containers, articles for cleaning purposes, scent sprays [atomizers], air fragrancing apparatus, aerosol dispensers, not for medical purposes, perfume burners, perfume vaporizers, perfume sprayers, plug-in diffusers for mosquito repellents, plug-in diffusers for air fragrancing; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods;

all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

Annex 2

Specification relied upon for the DREAM BIGGER mark:

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a

retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

Annex 3

Specification relied upon for the DREAM COACH mark:

Class 20

Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24

Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35

Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive

electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.