BL O/0412/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4038062
BY XPEL MARKETING LTD
TO REGISTER THE TRADE MARK:

IN CLASSES 3, 4, 18, 21 AND 25

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 450776
BY FLICK FASHIONS LIMITED

BACKGROUND AND PLEADINGS

1. On 12 April 2024 Xpel Marketing Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision ("the contested mark") in the UK. The application was published for opposition purposes on 16 August 2024, in respect of goods in classes 3, 4, 18, 21 and 25.[1]

2. On 15 November 2024, the application was partially opposed by FLICK FASHIONS LIMITED ("the opponent"), based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act").[2] The opposition is directed against some of the goods in the application.[3] The opponent relies upon the following trade marks:

DREAMS

UKTM no. 2060937

Filing date: 13 March 1996

Registration date: 25 October 1996

Relying upon all the goods in Class 25 for which the mark is registered[4]

("the First Earlier Mark")

DREAM

UKTM no. 2216417

Filing date: 7 December 1999

Registration date: 27 April 2001

Relying upon all the goods in Class 25 for which the mark is registered.[5]

("the Second Earlier Mark")

DREAMS LONDON

UKTM no. 3904128

[1] See Annex 1.
[2] 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. See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.
[3] See goods comparison.
[4] See goods comparison.
[5] See Annex 2.

Filing date: 24 April 2023
Registration date: 21 July 2023
Relying upon all the goods in Class 25 for which the mark is registered.[6]
("the Third Earlier Mark")

3. The trade marks upon which the opponent relies qualify as earlier trade marks under section 6 of the Act by virtue of their earlier filing dates. However, only the First and Second Earlier Marks had completed their registration process more than 5 years before the filing date of the contested application and are therefore subject to the use conditions, as per section 6A of the Act. As the Third Earlier Mark had not completed its registration process more than 5 years before the application date of the mark in issue, it is not subject to proof of use pursuant to Section 6A of the Act. The opponent can therefore rely upon all the goods identified in respect of its Third Earlier Mark.

4. The opponent claims that the parties' marks are visually, aurally and conceptually highly similar and that the respective goods are identical or similar, resulting in a likelihood of confusion and association on the part of the public.

5. The applicant filed a counterstatement denying the grounds of opposition and putting the opponent to proof of use in respect of the First and Second Earlier Marks.

6. Only the opponent filed evidence. No hearing was requested and only the applicant chose to file written submissions in lieu of the same.

7. The opponent is represented by Stratagem Intellectual Property Management Limited. The applicant is represented by TR Intellectual Property Ltd.

EVIDENCE AND SUBMISSIONS

8. The opponent's evidence came in the form of the witness statement of Tahir Sharif, dated 22 May 2025, along with exhibits FF1 to FF15. Mr Sharif is the Executive Director of the opponent, a position held since 1983. The evidence has been adduced

[6] See Annex 2.

to prove the use that has been made of the First and Second Earlier Marks. The opponent also chose to file written submissions alongside its evidence.[7]

9. The applicant filed written submissions on 23 July 2025. The submissions provide the applicant's response to the opponent's proof of use evidence.

10. The opponent filed written submissions in reply on 25 September 2025.

11. The applicant filed written submissions in lieu of a hearing on 17 November 2025.

12. I make this decision having taken full account of all the papers before me, referring to them, as necessary, below.

PRELIMINARY ISSUES

13. The applicant raised points in its counterstatement that I intend to address as preliminary issues. Before going any further into the merits of this opposition it is necessary to explain why, as a matter of law, the points raised will have no bearing on the outcome of this opposition.

- Goods comparison and the target market

14. The applicant states the following:

> "The Applicant submits that the respective target markets are different. The Applicant's range is aimed at children and young adults. The Opponent's target market seems to be aimed at the older female market."

15. Differences between the goods currently provided by the parties, such as particular characteristics of the goods, are irrelevant, except to the extent that those differences are apparent from each party's specification. It is the goods relied upon by the opponent and the goods applied for by the applicant that I will be comparing later in

[7] Filed on 23 May 2025.

this decision. The assessment I must make between the goods is a notional and objective assessment, rather than a subjective one.

16. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time.[8] As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods at issue.

- State of the register

17. The applicant states the following:

> "The Applicant submits that there are numerous other Marks on record in Class 25 incorporating the words DREAMS or DREAM.
>
> […]
>
> The Opponent cannot therefore possibly claim to have exclusive rights in the words DREAMS or DREAM.

18. I deduce that the main purpose of the applicant's submissions is to try and demonstrate that the 'DREAM'/'DREAMS' element of the opponent's marks is of low/weak distinctiveness due to the existence of other marks on the register incorporating the word and to possibly demonstrate the successful coexistence of closely similar marks.

19. However, it is important to recall that the state of the register is not evidence of how many of such trade marks are effectively used in the market, nor does it establish that the distinctive character of the elements in question has been weakened because of their frequent use in the field concerned.

[8] *Devinlec Développement Innovation Leclerc SA v OHIM,* Case C-171/06P

20. In considering this issue further, I refer to the case of *Zero Industry Srl v OHIM*, Case T-400/06, wherein the General Court ("GC") stated that:

> "73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71)."

My Approach

21. The opponent relies upon three earlier marks. In my view, the First Earlier Mark, being UKTM no. 2060937 'DREAMS', is the closest in terms of similarity with both the contested mark and the class 25 goods at issue. Accordingly, I will consider the opposition on the basis of that mark, in the first instance, returning to the Second and Third Earlier Marks only to the extent that it is necessary to do so. For ease of reference, going forward, I will refer to the opponent's First Earlier Mark simply as, 'the opponent's mark'.

22. As previously stated, the opponent's mark is subject to use conditions in accordance with section 6A of the Act because the mark was registered more than five years before the application date of the contested mark. Although the opponent relies on all its class 25 goods for the opposition, it has made a statement to the effect that it has only used the mark during the five year relevant period in relation to

clothing.[9] However, for reasons that will become apparent later in this decision, I do not consider that the issue of proof of use will be determinative in these proceedings, and I will conduct my assessment on the basis that the opponent can rely upon the full breadth of its specification.

DECISION

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

23. Sections 5(2)(b) of the Act states that:

> "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."

24. 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks

[9] Form TM7 – Notice of opposition, See Section A – Q5, Q6, Q7 and Q7a.

and must instead rely upon the imperfect picture of them they have kept in their 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 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

Opponent's goods	**Applicant's goods**
Class 25 Articles of clothing; swimwear, footwear and headgear.	Class 25 Eye masks; headbands; socks; slippers; gift boxes containing eye masks; headbands; socks and/or slippers.

25. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

My Approach

26. I do not intend to undertake a full comparison of the competing goods at this stage of the decision, but I will instead proceed on the basis that at least some of the contested goods are identical to those covered by the earlier mark, in line with the principle set out above in *Meric.* For example, the applicant's *slippers* fall within the opponent's broad term *footwear,* consequently, these goods are *Meric* identical. If the opposition fails even where the goods are (*Meric*) identical, it follows that the opposition will also fail where the goods at hand are only similar. However, if a likelihood of confusion is found, I will proceed to assess the goods at issue in full.

The average consumer and the nature of 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 in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

28. 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 and enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

29. The average consumer of the goods at issue will be a member of the general public or a business user, such as a clothing retailer. The average consumer is likely to take into consideration various factors when selecting the goods, such as suitability, size, colour, quality and cost, etc. Overall, I find that a medium degree of attention is likely to be paid during the purchasing process.

30. The goods are likely to be sought out primarily by eye, including via websites, for example, and so I would expect the purchase to be mainly visual. However, I bear in mind that the goods may sometimes be the subject of word-of-mouth recommendations and therefore aural considerations are also borne in mind.

Comparison of the trade marks

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

"34. […] 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 artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

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

Opponent's mark	Applicant's mark
DREAMS	

34. Both parties have filed lengthy submissions regarding the similarity of the marks. Whilst I do not propose to reproduce those here, I have taken them all into consideration in reaching my decision.

Overall impression

35. The opponent's trade mark consists of the word 'DREAMS'. The overall impression of the mark resides in this single element.

36. The applicant's trade mark is a composite mark consisting of words and figurative elements. The mark as a whole is presented in greyscale. The words 'Candy' and 'Dreams' are placed one on top of the other. Both words are presented in a large upper and lowercase cursive font. The words are centrally placed upon a rectangular background. Positioned in the top left-hand corner of the rectangular background is a figurative device element resembling a rosette. I find that the word 'Candy' qualifies the word 'Dreams', however, I acknowledge that this combination is slightly unusual. With regards to the figurative elements, for reasons I will come to discuss in the conceptual comparison, I find that these elements, whilst not negligible, play a lesser role in the overall impression. On balance, I find that the words 'Candy Dreams' make

an equal contribution when considered as a whole, and it is the combination of these two words that dominate the overall impression.

Visual comparison

37. Visually, the marks overlap to the extent that they both contain the word DREAMS/Dreams. I do not consider the distinction in letter case to be a point of significant difference between them. However, the word 'Candy' present in the applicant's mark, along with the greyscale presentation, stylised font and device elements are all points of visual difference. Taking into account the similarities, whilst bearing in mind the differences, overall, I find the marks to be visually similar to between a low to medium degree.

Aural comparison

38. Aurally, the word DREAMS/Dreams will be pronounced identically in both marks. The word 'Candy' in the applicant's mark is a point of aural difference, more so because it is the first word in the mark. The figurative elements in the applicant's mark will not be articulated. In my view, the marks are aurally similar to between a low to medium degree.

Conceptual comparison

39. 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* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

40. Conceptually, the ordinary English dictionary word DREAMS/Dreams present in the respective marks will be attributed the identical meaning, namely, thoughts or images experienced during sleep, or a reference to an individual's ambitions, goals or aspirations. Accordingly, this element in the marks share the same concept. The fact that this word is stylised in the applicant's mark does not detract from this concept.

41. Similarly, when taken solus, I am of the view that consumers will likely attribute the ordinary meaning to the dictionary word ‘Candy’ present in the applicant’s mark, namely, sweets or chocolates etc. However, I acknowledge that a proportion of consumers may also perceive ‘Candy’ as a female forename, as mentioned by the applicant in their submissions.[10]

42. When considered as a whole, whilst the words ‘Candy Dreams’ in the applicant’s mark does not send an obvious, descriptive message, it may be perceived as alluding to dreams involving candy and/or as a play on the phrase ‘sweet dreams’. Accordingly, as this element is absent from the opponent’s mark, the application contains an additional concept. With regards to the device/figurative elements present in the applicant’s mark, I am of the view that these elements will be perceived merely as decoration.

43. Overall, I find the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

44. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, 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 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

[10] Written submissions dated 23 July 2025.

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)."

45. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, 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.

46. The opponent's mark consists of the ordinary dictionary word DREAMS, meaning thoughts or images experienced during sleep, or as a reference to an individual's ambitions, goals or aspirations. Accordingly, in terms of the goods at issue, the mark will not be perceived as obviously descriptive or allusive, unless perhaps when it is used on nightwear, for example. Overall, I consider the opponent's mark to be inherently distinctive to no more than a medium degree.

47. However, since the opponent has filed evidence of use, I will now go on to consider whether the mark's distinctive character has been enhanced above a medium degree through use, in relation to the goods at issue.

48. I note the following from the opponent's evidence:

- The opponent has sold clothing (and related items) bearing the 'DREAMS' trade mark since 1982. The opponent's goods have been sold principally to retailers

in the UK and EU, via its cash and carry outlet located in Essex, England and via its website 'www.flick.co.uk'.[11]

- Clothing containing a 'DREAMS' label has been sold by the opponent during the relevant period (13 April 2019 to 12 April 2024).[12]

- The opponent deals primarily in ladies' fashionwear where the 'DREAMS' mark appears discreetly either on a neck or waist label, as well as on small hangtags used for retail purposes.[13]

- Sales of clothing bearing a 'DREAMS' neck or waist label in the UK, between the years 2018-2024 are given as follows:[14]

2024 (Jan -April only):	£ 539,397.00
2023	£ 1,403,110.90
2022	£ 1,889,003.70
2021	£ 1,178,363.59
2020	£ 916,335.34
2019	£ 980,0453.16
2018	£1,144,005.62

- Sample invoices provided in support of the above sales figures demonstrate sales of various clothing items by the opponent to various addresses throughout the UK, during the relevant period. In his witness statement, Mr Sharif confirms that the clothing items sold all contained labels featuring the 'DREAMS' mark.[15]

- The opponent does not typically advertise or produce catalogues in relation to its clothing goods but instead primarily chooses to advertise/promote its 'DREAMS' branded clothing at trade exhibitions. During the relevant period, the opponent attended numerous spring and autumn trade exhibitions, held at various locations in the UK, namely the West Midlands, Harrogate, London, and

[11] Witness statement of Mr Sharif, paragraph [3].
[12] Exhibits FF4 and FF5.
[13] Exhibit FF3.
[14] Witness statement of Mr Sharif, paragraph [5].
[15] Exhibits FF6 to FF11.

Exeter.[16] During the relevant period the opponent spent over £280k attending the trade exhibitions.[17]

- During the relevant period, per year, the opponent sold approximately 130k units of 'DREAMS' branded clothing to more than 500 customers.[18]

49. I am satisfied that the opponent has been trading under the 'DREAMS' brand, in the UK, during the relevant period and that the sales figures provided supports this. However, it is noted from the evidence that the opponent has only advertised/promoted its 'DREAMS' trade mark at a number of trade exhibitions held in the West Midlands, Harrogate, London, and Exeter during the relevant period. In this regard, I have no evidence before me relating to the approximate number of attendees at the exhibitions, nor the approximate number of visitors to the opponent's trade stands, etc. As such, I am unable to assess with any accuracy how many consumers may have been exposed to the opponent's 'DREAMS' trade mark during the exhibitions. Further, I have no evidence before me showing the market share the opponent occupies within the UK clothing market. Bearing in mind the considerable size of the UK clothing market, I find the sales figures for the relevant period to be fairly modest. Accordingly, whilst I am satisfied that the opponent has been trading under the 'DREAMS' brand, in the UK, during the relevant period, I am of the view that the evidence before me does not sufficiently demonstrate that the earlier mark 'DREAMS' is known to consumers in the UK to such an extent that the mark's distinctive character has been enhanced above a medium degree through use, in relation to the goods at issue.

Likelihood of confusion

50. 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 them and the goods being down to the responsible undertaking being

[16] Witness statement of Mr Sharif, paragraph [7].
[17] Witness statement of Mr Sharif, paragraphs [8] and [9].
[18] Witness statement of Mr Sharif, paragraph [10].

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 marks may be offset by a greater degree of similarity between the 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.

51. I have found as follows:

- At least some of the goods are identical as per *Meric*.

- The average consumer is a member of the general public or a business user, who will pay a medium degree of attention during the purchasing process.

- The purchasing process for the goods is predominantly visual, although I do not discount an aural component.

- The marks are visually and aurally similar to between a low to medium degree and conceptually similar to a medium degree.

- The earlier mark is inherently distinctive to no more than a medium degree, and the evidence provided was insufficient for me to find that the degree of distinctiveness had been enhanced through use of the mark.

52. The identity of the goods is clearly a factor in favour of the opponent. However, taking all of the above factors into account, I consider it unlikely that the marks will be mistakenly recalled or misremembered as each other. This is particularly the case given the low to medium degree of visual and aural similarity between the marks, and the fact that the average consumer will be paying a medium degree of attention during the purchasing process. The coinciding DREAMS/Dreams is the only word in the

opponent's mark, whereas it is the second and last word in the applicant's mark (Candy Dreams). Therefore, despite the coinciding element, I am of the view that the word 'Dreams' does not play an independent distinctive or dominant role in the applicant's mark. In my view, the word 'Candy' qualifies the word 'Dreams', meaning the average consumer will perceive the words 'Candy Dreams' as a unit/phrase. As such, I find that the marks will convey different meanings overall,[19] which will assist the average consumer in distinguishing one mark from the other. Furthermore, the figurative elements in the applicant's mark cannot be overlooked. Accordingly, I do not consider there to be a likelihood of direct confusion.

53. Having found no likelihood of direct confusion, I now go on to consider indirect confusion.

54. I acknowledge that a finding of indirect confusion should not be made merely because the two marks share a common element. Furthermore, it is not sufficient that a mark merely calls to mind another mark:[20] This is mere association not indirect confusion.

55. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[21]

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the

[19] *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), [paragraph 20-21].
[20] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.
[21] BL O/375/10.

common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand 16 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)."

56. These examples are not exhaustive but provide helpful focus.

57. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. He added that, "trade mark law was about consumers' unwitting assumptions, not what they could find out if they thought to check.".

58. Accordingly, it is necessary for me to bear this in mind when considering whether the common element DREAMS/Dreams is sufficiently powerful, when weighed against the differences.

59. Having recognised the differences between the marks, I consider it unlikely that the average consumer will conclude that they originate from the same or economically linked undertakings. The word 'DREAMS' is not so strikingly distinctive that consumers would assume only one undertaking would use it in their mark, nor is the word 'Candy' in the applicant's mark non-distinctive or logical for a brand extension. Accordingly, I find no proper basis for a finding of indirect confusion. I am of the view that the average consumer would simply put the presence of the common element DREAMS/Dreams in the marks down to coincidence rather than an economic connection between the undertakings.

Final Remarks

60. For the avoidance of doubt, even if I had found there to be some enhancement to the distinctiveness of the earlier mark, I would have reached the same conclusion bearing in mind the differences between the marks and the medium level of attention being paid during the purchasing process.

61. Furthermore, as I have found no likelihood of confusion where the goods are (*Meric*) identical, it will also apply even if I had undertaken a full assessment and found that they are only similar.

62. As previously stated,[22] my focus in this decision has been on the opponent's 'DREAMS' mark as its best case, having been replicated in its entirety within the applicant's mark. For the sake of completeness, I do not consider that the opponent's second and third earlier marks, namely 'DREAM' and 'DREAMS LONDON' would progress the opponent's case any further.

[22] See paragraph [21] of this decision.

CONCLUSION

63. The opposition is unsuccessful and subject to any successful appeal, the application may proceed to registration.

COSTS

64. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice (TPN) 1/2023. In the circumstances, I award the applicant the sum of £1,400 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement	£450
Considering and commenting on the other side's evidence	£500
Preparing submissions in lieu of a hearing	£450
Total	**£1,400**

65. I therefore order Flick Fashions Limited to pay Xpel Marketing Ltd the sum of £1,400. This should be paid within twenty-one days of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the appeal proceedings.

Dated this 13th day of May 2026

Sam Congreve

Sam Congreve
For the Registrar

Annex 1

UKTM no. 4038062 - CANDY DREAMS (figurative)

Class 3 Non-medicated toilet preparations; skin care preparations; hand lotions; hand creams; creams; body wash; body cream; body lotion; shower creams; body butter; bath salts; bath crystals; bath bombs; bath foam; bath creams; lip balm; bath oils; shampoos; conditioners; facial moisturisers; facial lotions; skins cleansers; facial creams; facial scrubs; facial masks; skin cleansing lotions; facial emulsions; skin moisturiser masks; facial, body and hand preparations; skin creams; skin lotions; non-medicated skin serums; facial serums; eye serums; eye creams; facial toners; exfoliating scrubs for the face; anti-aging moisturisers; reed diffusers; air fragrance reed diffusers; wax melts; scented wax melts; gift boxes containing non-medicated toilet preparations, skin care preparations, hand lotions, hand creams, creams, body wash, body cream, body lotion, shower creams, body butter, bath salts, bath crystals, bath bombs, bath foam, bath creams, lip balm, bath oils, shampoos, conditioners, facial moisturisers, facial lotions, skins cleansers, facial creams, facial scrubs, facial masks, skin cleansing lotions, facial emulsions, skin moisturiser masks, facial, body and hand preparations, skin creams, skin lotions, non-medicated skin serums, facial serums, eye serums, eye creams, facial toners, exfoliating scrubs for the face, anti-aging moisturisers, reed diffusers, air fragrance reed diffusers, wax melts and/or scented wax melts.

Class 4 Candles; scented candles; fragranced candles; tealights; gift boxes containing candles, scented candles, fragranced candles and/or tealights.

Class 18 Wash bags; wash bags for carrying toiletries; toiletry bags; gift boxes containing wash bags, wash bags for carrying toiletries and/or toiletry bags.

Class 21 Body scrubbing puffs; body sponges; gift boxes containing body scrubbing puffs and/or body sponges.

Class 25* Eye masks; headbands; socks; slippers; gift boxes containing eye masks; headbands; socks and/or slippers.

("the contested mark")

* The opposed goods.

Annex 2

UKTM no. 2216417 – DREAM

Class 25 Clothing; swimwear; footwear; headgear.

("the Second Earlier Mark")

UKTM no. 3904128 - DREAMS LONDON

Class 25 Clothing; footwear; headgear.

("the Third Earlier Mark")