BL O/0418/26

TRADE MARKS ACT 1994

ON APPEAL TO THE APPOINTED PERSON

IN THE MATTER of the UK designation of International Trade Mark Registration No. 1726270

AND IN THE MATTER of Opposition thereto, No. OP000444009

DECISION

INTRODUCTION

1. This is a statutory appeal made pursuant to section 76 of the Trade Marks Act 1994 (the **"TMA"**). It is an appeal from the decision of Hearing Officer Mrs. E Rees acting for the Registrar of Trade Marks (the **"Decision")** dated 19 June 2025.

2. I shall refer to VIPR DIGITAL Ltd as the Appellant and Tixr Inc as the Respondent.

3. The Decision relates to an Opposition brought by the Appellant in respect of the UK designation of International Trade Mark Registration No. 1726270 for the word mark TIXR in respect of goods and services in classes 9, 41 and 42 (the **"Contested Mark").**

4. The Appellant opposed the application for the Contested Mark under section 5(2)(b) TMA based on the following registrations (collectively the **"Appellant's Earlier Registrations"):**

   4.1. UK Trade Mark Registration No. UK00003790010 for the series of marks  and  ; and

4.2. UK Trade Mark Registration No. UK00912203873 for the word mark FIXR.

5. The Appellant's Earlier Registrations cover goods and services in Classes 9, 35, 36 and 41 (the specifications in these classes being identical for all earlier marks) and the opposition was based on all the goods and services covered by the Contested Mark.

6. The opposition failed in its entirety, the Hearing Officer finding that there was no likelihood of direct or indirect confusion.

THE GROUNDS OF THE APPEAL

7. The Appellant submitted that the Hearing Officer erred by:

7.1. finding no likelihood of either direct or indirect confusion between the Contested Mark and the Earlier Marks ("**Ground 1**");

7.2. finding no more than a medium degree of visual similarity between the Contested Mark and the Earlier Marks ("**Ground 2**"); and

7.3. failing to consider all the Appellant's class 41 services when comparing the services of the Contested mark with the services of the Applicant's Earlier Registrations ("**Ground 3**").

8. Finally, the Appellant submitted that if none of Grounds 1 – 3 succeeded on their own, then the cumulative effect of all the errors made by the Hearing Officer resulted in a Decision which is rationally insupportable and outside the bounds within which reasonable disagreement is possible ("**Ground 4**").

9. The Respondent raised additional matters which it said the Hearing Officer should have relied upon in her assessment of the likelihood of confusion. These contentions are the subject matter of its respondent's notice. I will deal with them, to the extent necessary, when I address Ground 1.

THE STANDARD OF APPEAL

10. There was no dispute as to the principles which guide how I should approach this appeal. These principles are well understood and are discussed in detail in *TT Education Ltd v Pie Corbet Consultancy* O/017/17 at [52], *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. The essence of the approach I should take was pithily summarised by Mr.

Thomas Mitcheson KC, sitting as the Appointed Person, in SOCIAL WORK NEWS (O/00/50/24) at [13], as follows:

> *To paraphrase, an appeal should only be allowed where the decision of the lower court was "wrong". Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible". In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.*

GROUND 2

11. Grounds 2 and 3 raise matters which are relevant to the basis upon which the Hearing Officer made her decision on the likelihood of confusion. I shall therefore deal with these grounds before turning to Grounds 1 and 4.

12. Ground 2 relates to the Hearing Officer's assessment of visual similarity. The key passages of her decision on that issue are as follows:

    a. Per paragraph 34 (footnotes removed):

    > *"Visually, the marks differ in their initial letter, which is "F" in the Opponent's mark and "T" in the Holder's mark. The marks overlap in the last three letters "IXR" (forming the second, third and fourth letters respectively) but a point of visual difference is the stylised negative space, which cuts through the letters. While the stylisation will not go unnoticed, I consider that the letters "IXR" are still clearly discernible. Bearing in mind that the beginnings of marks tend to have more impact that the ends and that differences in short marks tend to make more of an impact. I consider the marks to be visually similar to no more than a medium degree."*

    b. Per paragraph 41 (footnotes removed):

    > *"Visually, the marks overlap in the last three letters "IXR" (forming the second, third and fourth letters respectively) but differ in their initial letter, which is "F" in the Opponent's mark and "T" in the Holder's mark. Bearing in mind that the beginnings of marks tend to have more impact that the ends and that differences in short marks tend to make more of an impact; I consider the marks to be visually similar to a medium degree."*

13. In respect of these findings the Appellant submitted that the Hearing Officer failed to appreciate that the letters "T" and "F" are visually highly similar and would be perceived by the relevant public (especially those paying an average or low level of attention) as

such. It also submitted that if the Hearing Officer had approached the visual assessment correctly, she would inevitably have concluded that the marks were similar to a high degree.

14. I disagree for the following reasons.

15. The Hearing Officer was entitled to give such weight as she thought fit to effect of the various elements of the marks on the average consumer. This exercise is part of an evaluative decision I should not interfere with unless there has been an obvious error in the Hearing Officer's analysis. Such error would only normally arise if the Hearing Officer had either:

a) failed to take something into account she should have done (e.g. the fact that the first letters of the marks she was comparing were T and F);
b) taken into account something she should not have done, and, or
c) reached a decision that no reasonable Hearing Officer could have reached (i.e. a decision that was *"outside the bounds within which reasonable disagreement is possible"*).

16. The first issue does not arise. In particular, it is clear from the passages quoted above that the Hearing Officer expressly turned her mind to the significance of difference in first letters of the marks. Thus:

a. she specifically states that the marks have different first letters;
b. she notes that beginnings of marks tend of have more impact than endings (relevant as T and F come first), and
c. she notes that differences in short marks tend to have more of an impact.

17. The second issue does not arise as it was not suggested that the Hearing Office took into account something she should not have done.

18. Turning to the final issue. The Hearing Officer's conclusion was that the marks are visually similar to a medium degree. There is nothing in the submissions or evidence before the Hearing Officer (including the differing first letters) which, in my view, inevitably leads to conclusion that the marks are similar to more than a medium degree. The Hearing Officer's conclusion therefore falls within the range of conclusions that was

reasonably open to her, and I dismiss this ground of appeal.

GROUND 3

19. This ground relates to the Hearing Officer's comparison of the class 41 services. The Appellant submitted that this comparison was fundamentally flawed as, it submitted, the Hearing Officer only considered a subsection of the Appellant's Earlier Trade Marks class 41 specification.

20. It is trite law that it may not be necessary to address each and every word in a specification. The Hearing Officer had this concept well in mind when she referred to the decision in *Separode Trade Mark* (BL O/399/10)] and stated as follows:

> 17. *For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons*.

21. With that in mind, I now turn to the manner in which she addressed the facts.

22. The class 41 services for which registration was sought for the Contested Mark were:

> *Ticket agency services rendered online via a mobile application for sporting, cultural, and other entertainment events.*

23. These services were considered at paragraph 22 of the Decision. Here the Hearing Officer compared them expressly with a small subset of the class 41 services for which the Applicant's Earlier Marks were registered. That subset was:

> *"arranging of ticket reservation and booking for entertainment, arranging of ticket reservation and booking for events and venues for cultural and entertainment purposes"*

24. The Hearing Officer stated as follows (per paragraph 22 of the Decision):

> *I understand 'ticket agency services' as the provision of services to facilitate the booking and/or reservation of tickets to events and the management of such bookings. I therefore consider the Holder's above services to be highly similar to the Opponent's* ***"arranging of ticket reservation and booking for entertainment, arranging of ticket reservation and booking for events and venues for cultural and entertainment purposes****". I say this because they overlap in nature and purpose, being to facilitate the booking or reservation of tickets to events. I note that the method of use may vary, as while the Holder's services are provided specifically via a mobile application, the Opponent's services are not restricted and could be provided in a range of different formats, which may include use via an app. An undertaking that*

provides ticket reservation and booking services may also offer these services via a mobile application. A consumer could choose to book tickets via an app, rather than via other means (e.g. telephone, website or in person), meaning that the services at issue will be in competition, with a customer choosing one service over another. I consider there will be an overlap in user, being a member of the public seeking event tickets. However, I do not consider that the services are complementary in the way outlined in caselaw. Overall, I find the services to be similar to a high degree.

25. It is somewhat difficult to understand exactly what the Hearing Officer has done in this paragraph as she does not explicitly address either a) the issue of grouping or b) the class 41 services of the Appellant's Earlier Mark other than those I have highlighted in the paragraph. I shall return to this later.

26. The Appellant submitted that the following two additional groupings of services were ones that the Hearing Officer should have considered:

    a) *"arranging of ticket reservation and booking for entertainment, arranging of ticket reservation and booking for events and venues for cultural and entertainment purposes"*

    b) the *"organisation of entertainment and events; ticket information services for entertainment and events"*

27. In relation to both of these groupings, the Appellant submitted that the only finding a properly directed Hearing Officer could make was one of identicality with the services of the Contested Mark. The difficulty with this submission is that the Hearing Officer's findings as regards nature, type, purposes, use, and complementarity in relation to the services she did consider, apply equally to those she was said not to have considered. This is because, in both cases, the Contested Marks services are limited to those *"rendered online via a mobile application"*. It therefore seems to me that whilst it is possible to criticise the expression of the Hearing Officer's decision in paragraph 22, that criticism in the end makes no difference. The better view is, I think, that she has treated the entirety of the class 41 specification of the Appellant's Earlier Mark as a single grouping. However, even if that were not correct, had she applied the same logic she set out in paragraph 22 to the two additional groups highlighted by the Appellant, it is clear that her conclusion would have been the same.

28. I therefore dismiss this ground of appeal.

GROUND 1

18. I turn to Ground 1 and after that, to the extent necessary, to the matters raised in the Respondent's Notice.

19. Ground 1 is directed to the Hearing Officer's assessment of the likelihood of confusion. In its skeleton the Appellant made three basic submissions:

    a. if it is right on Grounds 2 and 3, then it follows that I need to re-assess the likelihood of confusion. That premise is of course correct in theory, but as I have rejected Grounds 1 and 2, it does not arise on this appeal;

    b. the Hearing Officer failed to apply the interdependency principle correctly;

    c. the Hearing Officer failed to take into account the issue of the average consumers imperfect recollection, and

    d. the Hearing Officer's analysis of indirect confusion was wrong.

Imperfect Recollection and Interdependency

20. At the appeal hearing the appellant accepted that the criticisms in relation to both imperfect recollection and interdependency were ones of weight. However, wrapped into that submission was an underlying contention that given the Hearing Officer's findings of fact (regardless of whether these were bolstered by the matters raised in Grounds 2 and 3) her conclusion on the likelihood of confusion lay *"outside the bounds within which reasonable disagreement is possible"*. That error, the appellant submitted, could be explained at least in part by a misapplication of either or both of the questions of imperfect recollection and interdependency. I reject this submission. In my view the Hearing Officer's finding on the likelihood of confusion was one, absent an identifiable error in analysis, she was entitled to make. As the Appellant's submissions in relation to recollection and interdependency are merely ones of weight, not principle, there is no such error.

Indirect Confusion

21. There was no criticism of the Hearing Officer's summary of the applicable legal

principles. She expressed her conclusion on the facts as follows:

> *57. While I note the examples set out by Mr Purvis are not exhaustive, in this case I see no reason why a consumer would believe the marks at issue are from the same or economically linked undertakings. Bearing in mind my findings set out in paragraph 48, I consider that the shared use of the letters "IXR" would be seen as coincidental, even where the goods are identical. Where the marks are seen on identical goods, the shared use of "IXR" may bring the other mark to mind, however I consider this would be mere association, rather than indirect confusion. I also see no reason why the average consumer would see the use of 'T' instead of an 'F' at the beginning of the mark to be a logical indicator of a sub-brand or brand extension. Taking all of this into account I find that there exists no likelihood of indirect confusion between the marks at issue*

58. The Appellant criticised this finding in two ways. First, it submitted that the finding was insufficiently reasoned. I disagree. There is, in my view, sufficient detail in the Hearing Officer's decision to understand the basis of her reasoning. Second, the Appellant submitted that the Hearing officer's conclusion was one she was not entitled to reach on the facts. In support of this submission the Appellant reprised its submissions before the Hearing Officer as to (a) the similarity/identicality of the services (b) the similarity of the marks (c) the nature of the average consumer and (d) the nature of the average consumer's interaction with the marks. These are all cogent submissions and ones which were doubtless made to the Hearing Officer. However, none of them in my view reveal an error of principle.

59. For these reasons, I find that the appellant has not identified a relevant error under Ground 1 and I reject this ground of appeal. As I have done this, I do not need to consider the Respondent's Notice.

GROUND 4

60. Having disposed of grounds 1 – 3 the only basis on which Ground 4 could succeed is if, regardless of the fact that no other error has been identified, the final result of the Hearing Officer's decision is one that is *"outside the bounds within which reasonable disagreement is possible.* It is difficult to formulate a circumstance where, the other grounds having failed, this ground could succeed. In any event, it is a ground that must fail in this case. No error of principle has been identified in any of the grounds, nor is the final conclusion of the Hearing Officer one that in my view *"outside the bounds within which reasonable disagreement is possible".* I therefore reject ground 4.

CONCLUSION

61. For the reasons set out above, the appeal is dismissed.

62. The Appellant shall pay the Respondent the following within 21 days of the date of this Decision:

    a. the sum of £600 ordered by the Hearing Officer but stayed pending this appeal;

    b. £1500 as a contribution to the Respondent's costs of this appeal.

63. Finally, I would like to thank the advocates (Kendal Watkinson for the Appellant and Jennifer Dixon for the Respondent) and those instructing them, for the thorough way in which this appeal was prepared and presented.

GEOFFREY PRITCHARD KC

The Appointed Person

11 May 2026