O/0429/26

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NO. 3846459
IN THE NAME OF GRAHAM JAMES MURRAY
TO REGISTER AS A TRADE MARK

IN CLASSES 3, 9, 16, 18,
21, 24 AND 25

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 440366
BY MURRAY'S WORLDWIDE, INC.

BACKGROUND AND PLEADINGS

1. On 6 November 2022, Graham James Murray ("the applicant") applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published for opposition purposes on 20 January 2023, in classes 3, 9, 16, 18, 21, 24 and 25.

2. The application is partially opposed by Murray's Worldwide, Inc. ("the opponent"). The opposition was filed on 20 April 2023 and is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act").[1] The opposition is directed against all of the goods in classes 3, 21 and 24 only of the application, as listed in the table under paragraph 23 of this decision. The opponent relies upon the following comparable mark:

MURRAY'S
UK trade mark registration number 902365955
Filing date: 31 August 2001
Registration date: 30 October 2002
Registered in Class 3
Relying on all goods, namely *Hair care products*.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[2]

4. The trade mark upon which the opponent relies qualifies as an earlier trade mark under section 6(1) of the Act. As the earlier mark was registered more than 5 years

[1] The opposition was originally filed under sections 5(2)(b) and 5(3) of the Act. However, in an email sent on 13 March 2025, the opponent confirmed its request to withdraw the 5(3) grounds of opposition. The opposition therefore proceeds in respect of the section 5(2)(b) grounds only.
[2] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

before the application date of the applicant's mark, it is, in principle, subject to the provisions on use under Section 6A of the Act. On its Form TM7 Notice of opposition and statement of grounds, the opponent made a statement of use in relation to all of the goods relied upon. Although the applicant could have required the opponent to provide proof of use of the earlier mark under section 6A, it did not do so.[3] As a result, the opponent is able to rely on all the registered goods without having to provide evidence that it has used its mark in relation to any of those goods.

5. The opponent submits that the earlier mark is wholly contained within the contested sign, with the word "MURRAY'S" as the dominant and distinctive element of that sign, and that the contested goods are identical and highly similar to the earlier goods, such that there exists a likelihood of confusion on the part of the public.

6. The applicant filed a counterstatement denying the claims.

7. Both parties elected to file evidence in chief during the evidence rounds.[4] The opponent also filed evidence in reply. Neither party requested a hearing; both parties filed written submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

8. In these proceedings, the opponent is represented by HGF Limited, the applicant is not professionally represented.

Preliminary Issues

Issue 1

9. Following the conclusion of the evidence rounds, and the subsequent filing of the written submissions in lieu of a hearing by both parties, it came to the attention of the Tribunal that the opponent's evidence in chief, comprising the witness statement of Lauren Richardson and accompanying exhibit labelled LR1 (parts 1-4) did not meet

[3] As per question 7 of the Form TM8 where the applicant has ticked 'No' in answer to the question: 'Do you want the opponent to provide "proof of use?".'
[4] See paragraphs 9 - 12 of this decision under the heading "Preliminary Issues".

the statutory requirement under rule 64(4)(b)(i) of the Trade Mark Rules 2008 ("the Rules") as the witness statement had been neither signed nor dated.

10. In the official letter dated 8 April 2026, the Tribunal advised the parties that the witness statement had been accepted in error, and, invoking rule 74 of the Rules, invited the opponent to file an amended witness statement alongside a completed form TM9R and the appropriate fee. The opponent responded to say that Ms Richardson, being a Trade Mark Attorney employed by the legal representative of the opponent, had since left its employ and so was not available to provide a signed version of the statement. It requested instead that a replacement statement be filed by an alternative attorney who was involved in the matter and had knowledge of the facts set out in the original statement.

11. The Tribunal confirmed that it would accept a replacement witness statement filed by an alternative attorney provided that the new witness statement did not materially alter or widen the scope of the original statement prepared by Ms Richardson. As the evidence was filed in support of the issue of the similarity of the goods at hand, rather than as evidence of use, the Tribunal suggested that in the alternative, the witness statement of Ms Richardson could be re-classified as written submissions rather than evidence, thus removing the need for it to be signed, or for a form TM9R with the appropriate fee to be filed. However, this would mean that the accompanying exhibit LR1 would not be taken into consideration.

12. The opponent elected to file a replacement witness statement and exhibit in the name of Melissa Stabler, alongside form TM9R and the relevant fee. On examination, the replacement witness statement was found to be a virtual duplicate which did not materially alter or widen the scope of the original statement, with identical exhibits filed. As such, the evidence was considered acceptable by the Tribunal. From this point on, this evidence will be referred to as "WSMS1", being the evidence in chief of the opponent.

Issue 2

13. I note that in the counterstatement, the applicant refers to his UK application as being for the same trade mark which he already holds in the Russian Federation, and refers to his "exclusive rights" under Russian certificate no. 765963. The counterstatement includes an extract of a proposal sent to the opponent's worldwide legal representatives in relation to the coexistence of the products in the territory of the Russian Federation, and proposing a signed agreement on coexistence between the parties in the Russian Federation "and other jurisdictions". No evidence has been provided that any such agreement was ever realised, with the applicant stating in the counterstatement that the correspondence suggesting the same had produced no response.[5] Also, in his written submissions in lieu of a hearing, Mr Murray submits that the applicant and the opponent have coexisted in the UK and other jurisdictions without any evidence of actual confusion.[6] To be clear, in regard to the matter before me, I am not bound by the behaviours or the decisions made in other jurisdictions. My decision, which is based on the evidence before me, rests on a likelihood of confusion in relation to the UK only. Further, absence of evidence of confusion does not necessarily mean an absence of actual confusion: *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, at [20]. I shall therefore take no further account of these submissions in making my decision.

EVIDENCE AND SUBMISSIONS

The Opponent's evidence

14. The opponent filed evidence in chief in support of the opposition in the form of the witness statement of Melissa Stabler, dated 21 April 2026 (WSMS1). Ms Stabler is a Trade Mark Attorney employed by the representative of the opponent. The witness statement is accompanied by exhibit MS1, part 1 – part 4. The exhibit includes examples of the same type of goods as those at issue being sold in conjunction, or by the same retailer.

[5] As such, I do not consider that this may be construed as "Without Prejudice" information.
[6] At point 6.

15. The opponent also filed evidence in reply in the name of Melissa Stabler in the form of the witness statement ("WSMS2"), dated 10 September 2025, which was accompanied by four further exhibits, as well as written submissions in lieu of a hearing, filed on 30 October 2025.

The Applicant's evidence

16. The applicant filed evidence in support of the defence in the form of the witness statement of Graham James Murray, dated 12 May 2025, which is accompanied by three exhibits. Mr Murray is the applicant and describes himself as the founder of the "Mr Murray" brand.

17. The applicant also filed written submissions in lieu dated 29 October 2025.

18. I have taken the evidence and submissions of both parties into account in reaching my decision and I will refer to them during the decision to the extent I consider necessary.

DECISION

19. 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.

Section 5(2)(b)

20. Section 5(2)(b) is relied on and reads as follows:

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

(a) …

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

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

21. Section 5A states:

"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."

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

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

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

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

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

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

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

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

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

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, 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

23. The goods to be compared are shown in the table below:

Applicant's goods
Class 3 *Shaving soap; Shaving soaps; Soap; Shaving lotion; After-shave; Shaving gels; Shaving foam; Soaps; Shaving creams; Shaving preparations; Shaving lotions; Shaving gel; Shaving balms; Shaving mousse; Shaving foams; Shaving oils; Shaving oil; Shave gel; Shaving balm; Shaving cream; Shave creams; Shaving sprays; Shave balm; Perfumed soap; Cosmetic soaps; Cosmetic soap; Cream soaps; Pre-shaving preparations; Pre-shave creams; After-shave gel; Liquid soaps; Liquid soap; Perfumed soaps; Hand soap; Scented soaps; Soap products; Shower soap; Bath soap; Hand soaps; Bar soap; Toilet soap; Facial soaps; Skin soap; Handmade soap; Pre-shave preparations; After-shave balms; After shave lotions; Pre-shaving lotions; Bath soaps; Body soap; Beauty soap; Toilet soaps; Shaving sets, comprised of shaving cream and aftershave; After-shave emulsions; After-shave lotions; Shaving stones [astringents]; After-shave creams; Shaving sticks [preparations]; After-shave preparations; Pre-shave gels; Pre-shave foams; Non-medicated soaps; Bars of soap; Soaps and gels; Liquid bath soaps; Liquid bath soap; Preparations for use before shaving; Foam for use in shaving; Alum blocks for shaving; Soaps for personal use; Shaving stones; Body cream soap; Cakes of soap; Shaving preparations in liquid form; Hair removal and shaving preparations; Soaps in liquid form.*
Class 21 *Shaving dishes; Shaving bowls; Shaving stands; Shaving brushes; Shaving pots; Soap dishes; Soap boxes; Boxes (Soap -); Soap containers; Shaving brush stands; Soap holders; Shaving brush holders; Stands for shaving brushes; Hand soap racks; Hand soap holders; Dishes for soap; Soap dispensing bottles ; Liquid soap dispensers; Holders for shaving brushes; Stands for shaving utensils; Soap dispensers; Soap racks; Hand soap dispensers; Stainless steel soap; Wall soap dishes; Liquid soap holders; Shaving brushes of badger hair; Mugs; Glass mugs; Travel mugs; Vacuum mugs; Mug sleeves; Beer mugs; Insulated mugs; Mug racks;*

Coffee mugs; Mug trees; Porcelain mugs; Earthenware mugs; Ceramic mugs; China mugs; Mug cosies ; Mugs of porcelain; Mugs of china; Cups and mugs; Mugs made of porcelain; Mugs made of earthenware; Mugs made of plastic; Mugs made of china; Mugs of precious metal; Mugs made of ceramic materials; Mugs, not of precious metal; Drinking mugs made of porcelain; Mugs made of fine bone china; Leather coasters; Coasters (tableware); Porcelain coasters; Plastic coasters; Wine coasters of precious metal; Coasters, not of paper or textile; Coasters, not of paper and other than table linen; Coasters other than of paper or of table linen; Water bottles; Aluminum water bottles; Plastic water bottles; Plastic water bottles [empty]; Water bottles for bicycles; Aluminum water bottles, empty; Water bottles sold empty; Covers for water bottles ; Empty water bottles for bicycles; Reusable stainless steel water bottles; Water bottles for bicycles, sold empty; Reusable plastic water bottles sold empty; Bottles; Reusable stainless steel water bottles sold empty; Vacuum bottles; Reusable bottles; Drinking bottles; Insulated vacuum bottles; Insulated bottles [flasks]; Sports bottles sold empty; Drinking bottles for sports; Vacuum bottles [insulated flasks].

Class 24

Towels; Hand towels; Beach towels; Children's towels; Bath towels; Yoga towels; Terry towels; Towelling coverlets; Towelling [textile]; Towelling material; Hooded towels; Turkish towel; Turkish towels; Golf towels; Kitchen towels; Glass cloths [towels]; Textile face towels; Large bath towels; Face towels; Towel sheet; Towels [textile]; Tea towels; Bathroom towels; Dish towels; Towels of textile; Bath wrap towels; Quilts of towel; Glass-cloth [towels]; Towels [of textile]; Japanese cotton towels (tenugui); Face towels of textile; Towels of textiles; Kitchen towels [textile]; Bath sheets (towels); Textile exercise towels; Face towels of textiles; Kitchen towels of textile; Hand towels of textile; Household linen, including face towels; Face cloths of towelling; Textile hair drying towels; Kitchen towels of cloth; Dish towels for drying; Towels [textile] for kitchen use; Face towels [made of textile materials]; Towels [textile] for the beach; Towels made of textile materials; Turban towels for drying hair; Towelling [textile] adapted for use in dispensers; Hand-towels made of textile fabrics; Towels [textile] for use in connection with toddlers; Towels [textile] for use in connection with babies; Towels of textile sold in pack form; Towels of textile featuring American football team logos; Textile piece goods for making-up

into towels; Make-up removal towels [textile] other than impregnated with cosmetics; Textile fabrics for use in the manufacture of towels; Make-up removal towels [textile] other than impregnated with toilet preparations.
Opponent's goods
Class 3 *Hair care products.*

24. Pursuant to section 60A of the Act, goods are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes.

25. Where the goods in the specification of one party are included in a broader term from the other party's specification, those goods are considered to be identical: See *Gérard Meric v OHIM,* Case T-133/05 at [29].

26. In *Canon*, Case C-39/97, the Court of Justice of the European Union ("CJEU") stated that:

> "23. In assessing the similarity of the goods or services concerned, … 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".

27. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") [1996] R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods.

My approach

28. The class 3 specifications of both parties include goods which may be broadly classified as toiletries or grooming products. As mentioned earlier in this decision, both parties have filed evidence intended to demonstrate the similarity or otherwise of the respective goods at issue. The opponent's evidence in chief comprises webpages showing that both hair products and beard grooming products may be purchased from the same (online) retailer, while the applicant's evidence focusses on showing a targeted search for beard products only. As cited above, the channels of trade of the respective goods are only one factor in the assessment of similarity between the goods. Having examined the evidence, I do not find that either party has conclusively proven either the degree of similarity or the dissimilarity of the goods at issue.[7]

29. I do not intend to undertake a comparison of the competing goods at this stage of the decision. I will instead proceed on the basis most favourable to the opponent, i.e. that at least some of the contested goods are similar to at least a medium degree to those covered by the earlier mark. If the opposition fails even where the goods are considered similar to a medium degree or higher, it follows that the opposition will also fail where the goods are found to be similar to a lesser degree, or are considered to be dissimilar.[8] 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

30. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the

[7] I also take into account the opponent's evidence in reply which includes references to earlier decisions issued by the Tribunal whereby findings of identity/a high degree of similarity were made between hair products and male grooming products such as beard balm and moustache wax. While I am not bound by the findings of these unrelated proceedings, I will, however, keep them in mind when making my decision.

[8] Under section 5(2)(b), a degree of similarity between the goods is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA.

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, inter alia, the average consumer's level of attention is likely to vary according to the category of goods or services in question.

31. The opponent submits that the goods at issue typically have a low to average cost and are directed at the public at large, who will purchase the goods by both aural and visual means, paying an average degree of attention. The applicant submits that his own goods are marketed as a niche grooming brand, targeted at beard and moustache care. However, marketing strategies, including the targeting of specific consumers, may change over time.[9] As such, I must make my assessment based on the average consumer of the goods to which the trade marks are applied and how they might fairly be used now or in the future.

32. In my view, the average consumer for the overlapping goods will be the general public, although I acknowledge that the average consumer of such grooming products could also be a professional such as a hairdresser or barber. The goods are sold through a range of outlets, including both physical stores and online. In physical retail and wholesale outlets, the goods will be displayed on shelves where they will be viewed and self-selected by the consumer. A similar process will apply to websites, where the consumer will select the goods having viewed an image displayed on a web page. Although visual considerations will dominate the process, I do not discount the aural element as the consumer may seek advice from sales staff. I would expect the price of the goods to vary somewhat, but overall I consider that the cost of the purchase is likely to be relatively low and the goods will be purchased reasonably frequently. The general public will want to ensure that the products and their ingredients are suitable for them and meet their specific personal needs. As such, I find that the overall level of attention will be medium when selecting the goods. Meanwhile, the professional consumer is likely to base their selection on the suitability and performance of the goods, as well as the cost and the reputation of the brand. With their own reputation being paramount, they will pay a higher than average degree of attention to the selection process.

[9] *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P, at [59].

Comparison of marks

33. 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 in *Bimbo SA v OHIM* Case C-591/12P, 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."

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

35. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
MURRAY'S	

Overall impression

36. The opponent's mark consists of the single word "MURRAY'S", presented in a standard typeface in capital letters. As the mark contains no other elements, the overall impression therefore rests in the word itself.

37. The applicant's mark is a composite mark, comprising an artistic illustration of the head and shoulders of a smiling red fox dressed in a white shirt, a black bow tie and a blue and black jacket. The fox is positioned centrally, encompassed by a circular black border which bears the words "mr. Murray's" in a white typeface at the top of the circle, and the words "Gentleman's" and "Products" in a thinner white typeface at either side of the lower half of the circle, the words being separated by the depiction of the fox. I agree with the opponent that the words "Gentleman's Products" are likely to be seen as descriptive of the type of goods to which the mark is applied, with the word elements of the mark as a whole alluding to the provenance of the goods at issue. However, I disagree with the opponent's submissions that the most dominant and distinctive element of the applicant's mark is the "MR MURRAY'S" element.[10] Neither do I consider that the words "Grooming Products" will go entirely unnoticed. Although the words "mr. Murray's" may be distinctive, in my view they do not dominate. I note the opponent's submission that on seeing device marks, consumers pay greater attention to the word elements rather than the figurative elements. While this is often the case, each comparison must be assessed on its own merits – in *L&D SA v OHIM* [2008] E.T.M.R. 62, the CJEU stated that:

> "55 Furthermore, inasmuch as L & D further submits that the assessment of the Court of First Instance, according to which the silhouette of a fir tree plays a predominant role in the ARBRE MAGIQUE mark, diverges from the case-law of the Court of Justice, it need only be stated that, contrary to what the appellant asserts, that **case-law does not in any way show that, in the case of mixed trade marks comprising both graphic and word elements, the word elements must systematically be regarded as dominant**." (**My emphasis**).

[10] At point 39 of the opponent's written submissions in lieu of a hearing.

Given the relatively small font used to present the words “mr. Murray’s” within the mark as a whole compared to the size of the fox element, in my view, it is the depiction of a fox dressed in a shirt, bow tie and jacket to which the eye is immediately drawn, and which plays at least an equal role with the words “mr. Murrays” in the overall impression of the mark.

38. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court (“GC”) noted that the beginning of words tend to have more visual and aural impact than the ends. However, I accept that this is not always the case, and it is not a “hard and fast rule of law”, but rather “a practical rule of thumb”.[11]

Visual comparison

39. The opponent’s mark comprises a single word with no stylisation or additional elements, while the applicant’s mark is a composite mark as described above, giving rise to a clear visual disparity between the marks. I do not consider the difference in capitalisation/title case to be relevant to the visual impact, as the registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. While I acknowledge the opponent’s submission that the earlier mark is wholly subsumed within the contested mark, I do not consider that the word “MURRAY’S” alone dominates the visual aspect of the applicant’s mark. Overall, I consider the marks to be visually similar to a very low degree.

Aural comparison

40. The opponent’s mark will be voiced as two syllables, “MUR-RAYS”. I consider that some consumers will articulate the word elements of the applicant’s mark in their entirety, as eight syllables, “MIS-TER MUR-RAYS GROOM-ING PROD-UCTS” and to those consumers, the marks are aurally similar to a very low degree. However, I also consider it likely that a not insignificant proportion of the average consumer would only voice the words “mr Murray’s” in the applicant’s mark, as four syllables. In these

[11] See the appeal decision of Dr Brian Whitehead, sitting as the Appointed Person, in case BL O/0648/24, at [21].

circumstances, the overlapping phonetic element “MUR-RAYS” comes at the end of the applicant’s mark, rendering the marks aurally similar to a low degree.

Conceptual comparison

41. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006][12].

42. I agree with the opponent’s submissions that the earlier mark would be understood by the average consumer as referring to a name given to a male individual or a common surname.

43. In *GEORGINE* case BL O/1212/23, Mr Philip Harris, sitting as Appointed Person, found as follows:

> “34. …, consumers do notice common or similar concepts in names, themes, or roots and these might influence them in the context of the names’ use as trade marks for goods and services even if, when encountering them as personal names, they apply them to different people.

44. I also note the findings of Ms Emma Himsworth QC (as she then was) on the conceptual similarity between names:[13]

> “29. Moreover, the fact that a mark is a name does automatically mean that the mark has a clear and specific semantic content for the relevant public (see for example C-361/04 P Claude Ruiz-Picasso and Others v EUIPO EU:C:2006:25).
>
> 30. It is therefore necessary to make an assessment of conceptual similarity between names on the basis of each individual case.”

[12] Paragraph 56.
[13] Case O-276-18 *SANDRO*.

45. While the possessive apostrophe indicates ownership, it is not clear in the opponent's mark what it is that belongs to an individual with either the forename or the surname "Murray", nor, where perceived as a surname, whether that individual is male or female. Meanwhile, the word "Murray's" in the applicant's mark is preceded by the title "mr." (mister), which clearly indicates a surname attributed to a male adult. Further when viewed as a whole, it is immediately recognisable that the applicant's mark refers to the grooming products of Mr. Murray. The additional depiction of the fox which is present only in the applicant's mark gives rise to a further conceptual disparity between the marks. Given that the name "MURRAY'S" is the only common element between the marks, overall, I consider the marks to be conceptually similar to a low degree.

Distinctive character of the earlier marks

46. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

> "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)."

47. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and

services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its mark has enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

48. The earlier mark comprises solely of the possessive name "MURRAY'S". Whether it is perceived as either a forename or as a surname, I do not consider it to be either particularly common or an especially unusual name in the UK. The mark is neither descriptive nor allusive of the opponent's goods. It is not, however, highly unusual as an invented word would be. Therefore, I find the earlier mark to be inherently distinctive to a medium degree for the goods covered by the mark.

Likelihood of confusion

49. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

50. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

> “16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

51. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

52. As explained at paragraph 29 of this decision, I have proceeded on the basis that at least some of the competing goods are similar to at least a medium degree. I considered the average consumer of the overlapping goods to be the general public who overall would pay a medium degree of attention during the predominantly visual selection of those goods, although I did not discount the aural considerations. I also considered hairdressers and barbers as the professional buyer, where I found the level of attention paid during the selection process would be higher than average.

53. I found the competing marks to be visually similar to a very low degree, while aurally, I considered the marks to be similar to a low degree, at best. I considered the marks to be conceptually similar to a low degree. I found the earlier mark to be inherently distinctive to a medium degree.

54. I have made a multi-factorial assessment of the various considerations in play. I take into account that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. I bear in mind the predominantly visual nature of the selection process, as well as the low degree of aural and conceptual similarity between the marks and the medium level of attention paid by the general public.[14] I consider the overall differences between the marks are such that they are unlikely to be mistakenly recalled as each other. I therefore find that there is no likelihood of direct confusion. I find this even for the respective goods which may be held to be highly similar or identical, which offsets a lesser degree of similarity between the marks.

55. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

[14] I note that in relation to the assessment of the likelihood of confusion, it is the section of the public with the lowest level of attention which must be taken into consideration - Case T-247/12, *Argo Group International Holdings Ltd. v OHIM*.

56. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold 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". Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

57. Keeping in mind the global assessment of the competing factors, and in particular the degree of visual, aural and conceptual similarity found between the marks, it is my view that it is unlikely that the average consumer would assume that there is a connection between the parties. I acknowledge the opponent’s submissions that “there is a clear risk that the average consumer will perceive the goods as originating from undertakings that are economically linked and will naturally consider the Contested Mark to be a brand extension or alteration of the Opponent’s”.[15] I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was), are not exhaustive. However, although consumers may consider that the marks coincidentally share the same name “MURRAY’S”, I do not see anything which would lead the average consumer into believing that one mark is a sub-brand of the other, or assume that there is an economic connection between the undertakings. I therefore find no likelihood of indirect confusion.

58. For the avoidance of doubt, bearing in mind the overall finding of a low degree of similarity between the marks and the interdependency principle, I would have reached the same conclusion even had I made a full comparison of the applicant’s goods against the goods relied upon by the opponent and found them all to be identical or highly similar. In light of my findings of no likelihood of confusion, it is unnecessary for me to return to undertake a full comparison of the goods as this would not improve the opponent's position.

[15] At point 65 of the written submissions in lieu.

59. The opposition under section 5(2)(b) of the Act fails in its entirety.

CONCLUSION

60. The applicant has been successful. Subject to any successful appeal, the application by Graham James Murray may proceed to registration.

COSTS

61. As the applicant has been successful, he is, in principle, entitled to a contribution towards its costs. For parties without professional representation, such costs would be based on £19 per hour,[16] reflecting the number of hours spent on the different stages of the opposition. In a letter to the parties dated 2 October 2025, the Tribunal invited the unrepresented applicant to indicate whether he wished to make a request for an award of costs and, if so, to complete and return the attached costs pro-forma by **16 October 2025**. The letter stated that "If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs". As the pro-forma was not returned, and as no official fees have been incurred in defence of the application, I make no order as to costs in this case.

Dated this 19th day of May 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General

[16] As was pertinent at the time these proceedings were launched and as set out in The Litigants in Person (Costs and Expenses) Act 1975 (as amended).