O/0441/26

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION OF THE INTERNATIONAL REGISTRATION NUMBER WO0000001666676

IN THE NAME OF FIZZ SOCIAL CORP

FOR THE FOLLOWING TRADE MARK:

FIZZ

IN CLASSES 9, 42 AND 45

AND

AN OPPOSITION THERETO UNDER NUMBER OP000438118

BY BUMBLE HOLDING LIMITED

BACKGROUND AND PLEADINGS

1. International trade mark 1666676 ("***the IR***") consists of the sign shown on the cover page of this decision and stands registered in the name of Fizz Social Corp ("***the Holder***"). The IR is registered with effect from 20 May 2022 but claims priority from 16 December 2021.[1] With effect from the same date, the Holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement.

2. The Holder seeks protection of the IR in relation to the following goods and services:

   Class 9 Downloadable mobile application software for social media and social networking purposes.

   Class 42 Providing a website featuring non-downloadable software for social media and social networking purposes.

   Class 45 Online social networking services; providing a website for the purpose of social networking.

3. The request to protect the IR was published for opposition purposes on 16 September 2022.

4. Bumble Holding Limited ("***the Opponent***") opposes the IR on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("***the Act***"). The Opponent relies upon the following series of earlier marks ("***the Earlier Mark***"):

   UK trade mark number: UK00003546140
   Marks' representation (series of two): BIZZ / bizz
   Filing date: 20 October 2020
   Registration date: 16 April 2021
   Relying upon the following goods and services:

[1] This is claimed from USA trade mark no. 97175611.

Class 9 Computer software; computer software and computer games (including software and games downloadable from the internet); software for social introduction; software for social networking; software for dating; software for business networking; software for personal and social networking, personal and social introduction, networking; computer application software for mobile phones for personal and social networking, personal and social introduction, networking; downloadable software in the nature of a mobile application personal and social networking, personal and social introduction, networking; parts and fittings for all the aforementioned goods.

Class 42 Computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of data, text, information, messages, images, graphics, photographic images, video, audio and audiovisual content; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites; hosting an online website community for registered users to share information, photos, audio and video content for the purposes of personal and social networking, personal and social introduction, networking; information, advisory and consultancy services relating to all the aforesaid.

Class 45 Personal and social introduction, personal and social networking, dating, relationships and advocacy services; online personal and social introduction, personal and social networking, dating, relationships and advocacy services; internet based dating services; location-based personal and social introduction, personal and social networking, dating, relationships and advocacy services; personal and social introduction, personal and social networking, dating, relationships and advocacy services provided via a software application for portable electronic

devices; information, advisory and consultancy services relating to all the aforesaid.

5. By virtue of its earlier filing date, the above registration constitutes an earlier mark in accordance with section 6 of the Act. As the Earlier Mark was registered less than five years prior to the priority date of the IR, it is not subject to proof of use in accordance with section 6A of the Act. The Opponent can, therefore, rely upon all of the goods and services it has identified without having to demonstrate use of the Eralier Mark.

6. The Opponent submits that the marks are similar to a high degree and that the goods and services at issue are identical or very highly similar, resulting in a likelihood of confusion, including a likelihood of association. The Opponent therefore requests that the contested application be refused in its entirety and an award of costs be made in its favour.

7. The Holder filed a defence and counterstatement denying the grounds of the opposition. More specifically, it is argued that the marks differ in their first letter leading to different pronunciations and meanings. The Holder requires the opposition be dismissed and an award of costs be made in its favour.

8. The Holder is represented by Winston Taylor International LLP and the Opponent is represented by Pinsent Masons LLP.

RELEVANCE OF EU LAW

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

EVIDENCE AND SUBMISSIONS

10. During the evidence rounds, both parties filed evidence. The Opponent filed evidence in chief in the form of a witness statement of Jack Sam Weaver, dated

22 January 2024, and is accompanied by exhibits JSW1 – JSW7. Mr Weaver is a Chartered Trade Mark Attorney at Pinsent Masons LLP (the Opponent's representative), and he has held this position since January 2022. The Opponent also filed evidence in the form of the witness statement of Danelle Shaw, dated 24 April 2024. Ms Shaw is a linguist specialist in legal documentation of TransPerfect Translations International, Inc. and has held this position since October 2011. Ms Shaw provided a translation of exhibits JSW1 and JSW2 from French to English. The Opponent filed further evidence in chief in the form of the witness statement of Jack Sam Weaver, dated 22 August 2024, and is accompanied by exhibits JSW1A – JSW4A.

11. The Holder filed evidence in chief in the form of a witness statement of Claire Groves, dated 11 June 2024, and is accompanied by exhibits CG1 – CG7. Ms Groves is a Trade Mark Attorney at Taylor Wessing LLP (the Holder's representative), and she has held this position since January 2023.

12. All the witnesses are duly authorised to provide evidence on behalf of the respective parties.

13. On 21 November 2025 the Opponent requested a hearing, but it was later cancelled on the Opponent's request. Only the Holder filed submissions in lieu of a hearing.

14. I will not summarise the evidence and submissions here, but I will refer to them as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.

PRELIMINARY MATTER

15. The Opponent provides a series of decisions from different jurisdictions (i.e., the French Intellectual Property Office, the EUIPO and the UK Intellectual Property Office) to show that marks containing "-IZZ",[2] or that are comprised of four letters and differ only in their first letter,[3] have been previously found similar. These decisions are:

[2] Mr Weaver's witness statement dated 22 January 2024 at [4].
[3] Mr Weaver's witness statement dated 22 August 2024 at [4].

- Decisions number 20-2854 and 20-383 from the French IP Office where it was found similarity, respectively, between “FIZZ” vs “TIZZ”[4] and “FIZZ” vs “rest in Tizz” [5].
- Decision from the EUIPO in opposition number B-3-137-596 where similarity was found between the figurative marks “KWIZZO” and “WIZZO”.[6]
- Decision number O/392/18 from the UK IPO where similarity between “TIVO” and “VIVO” was found.[7]
- Case T-493/12 where the General Court found similarity between “GEPRAL” and “DEPRAL”.[8]
- Decision number O/413/17 from the UK IPO where similarity was found between the figurative marks “GOGO” and “COGO”.[9]
- Decision from the EUIPO in opposition number B-3-139-737 where the marks “BIZZ” and “WIZZ” were found confusingly similar.[10]

16. I note the contents of the evidence provided. I bear in mind that I am not bound by previous decisions of other foreign IP offices, the EUIPO or this Tribunal, and that I must draw my own conclusions on the marks’ similarity as rationalised below in this decision. Nonetheless, I have considered the evidence provided, and I find it to be immaterial to decide the case at hand as further clarified in the following paragraphs.

17. Regarding the French decisions and the EUIPO decision in opposition number B-3-137-596, the Holder contends that they are immaterial for the case at hand insofar as they originate from a different jurisdiction, concern different trade marks, different goods, and a different public.[11] I agree with the Holder. Notably, the decisions concern the French-speaking public, which is likely to understand the marks, especially the word “FIZZ”, differently from the UK consumer. The same applies to the EUIPO decision where the relevant public considered was the

[4] Exhibit JSW1.
[5] Exhibit JSW2.
[6] Exhibit JSW3.
[7] Exhibit JSW4.
[8] Exhibit JSW5.
[9] Exhibit JSW1A.
[10] Exhibit JSW2A.
[11] Holder’s submissions in lieu at [16] and [17].

Spanish-speaking general consumer who was found not to attach any meaning to the marks.

18. Turning to decision number O/392/18, the Holder submits that the Hearing Officer ("HO") did not find the marks to be confusingly similar. The Holder is correct, and I agree. In the referred decision, the case was decided exclusively on a section 5(3). This is already a point of difference from the case at hand (leaving aside the fact that the marks differ from those at hand). Regarding the marks' similarity, in finding a link between the marks, the HO found that *"[…] because of the different first letter of the respective marks, the impact of which is likely to be greater because of the relatively short nature of both marks will result in the link not being particularly strong, with the applicant's mark doing no more than bringing the opponent's mark to mind*" (my emphasis).[12] Thus, I agree that no confusing similarity was found *per se* in line with a section 5(2)(b) claim, but only a not particularly strong link. Hence, also this case is irrelevant to the assessment in this present case.

19. Regarding decision number T-493/12, the Holder submits that also in this case no parallel can be drawn in that the respective cases concern different parties, different marks, different goods, different relevant public, and different semantic considerations since the case concerned marks that were made-up names for pharmaceutical products.[13] I agree with the Holder. For example, I note that the Court considered as relevant public pharmacists and patients in Austria with high and above-medium level of attention.

20. The same reasoning applies to decision number O/413/17 that concerns different trade marks (i.e., "GOGO" vs "COGO"), and the relevant public would understand the marks differently from the case at hand. Therefore, I do not see any comparison between this case and the one under assessment.

21. Finally, regarding the EUIPO decision in opposition number B-3-139-737, although I appreciate that the case concerns the mark "BIZZ", the goods and services are different. Additionally, in this case the EUIPO took into account the Bulgarian-, Italian-, Slovak- and Spanish-speaking parts of the relevant public and it was found that neither of the verbal elements in the marks had any clear meaning for such

[12] O/392/18 at [20].
[13] Holder's submissions in lieu at [19].

relevant public. Therefore, also this previous case reported by the Opponent is not on par with the case at hand and I cannot draw any parallel.

22. Following from the above considerations, the decisions submitted by the Opponent do not bear any relevance to my assessment. Thus, I will not refer to them any further.

DECISION

Section 5(2)

23. The opposition is based upon section 5(2)(b) of the Act, which 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".

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 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 the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

25. Section 60A of the Act provides:

> "(1) For the purpose of this Act goods and services-
>
> (a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.
>
> (b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.
>
> (2) In subsection (1), the "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975."

26. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, where the Court of Justice of the European Union (CJEU) stated at paragraph 23 of its judgment:

> "In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, 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. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281, for assessing similarity were:

> (a) The respective uses of the respective goods or services;
>
> (b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

28. In *YouView Ltd v Total* Ltd [2012] EWHC 3158 (Ch) at [12] Floyd J stated:

"[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

29. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

"365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, Reed Executive plc v Reed Business Information

Ltd [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

30. In *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) said at [19]:

> "[…] definitions of services … are inherently less precise than specifications of goods. […] In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

31. The General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut fur 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".

32. 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

(see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

33. The goods and services to be compared are shown in the table below:

Opponent's goods and services	**Holder's goods and services**
Class 9 Computer software; computer software and computer games (including software and games downloadable from the internet); software for social introduction; software for social networking; software for dating; software for business networking; software for personal and social networking, personal and social introduction, networking; computer application software for mobile phones for personal and social networking, personal and social introduction, networking; downloadable software in the nature of a mobile application personal and social networking, personal and social introduction, networking; parts and fittings for all the aforementioned goods.	Class 9 Downloadable mobile application software for social media and social networking purposes.

Class 42 Computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of data, text, information, messages, images, graphics, photographic images, video, audio and audiovisual content; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites; hosting an online website community for registered users to share information, photos, audio and video content for the purposes of personal and social networking, personal and social introduction, networking; information, advisory and consultancy services relating to all the aforesaid.	Class 42 Providing a website featuring non-downloadable software for social media and social networking purposes.
Class 45 Personal and social introduction, personal and social networking, dating, relationships and advocacy services; online personal and social introduction,	Class 45 Online social networking services; providing a website for the purpose of social networking.

personal and social networking, dating, relationships and advocacy services; internet based dating services; location-based personal and social introduction, personal and social networking, dating, relationships and advocacy services; personal and social introduction, personal and social networking, dating, relationships and advocacy services provided via a software application for portable electronic devices; information, advisory and consultancy services relating to all the aforesaid.	

34. The Holder admits that the respective goods and services are similar to an average degree.[14] Accordingly it is stated that:

> "*35. The Applicant submits that the Opponent has not demonstrated the identity or high degree of similarity between the goods and services covered by the respective marks.*
>
> *36. The Applicant submits that the Contested Goods and Services are primarily intended for social media purposes, while the Opponent's Goods and Services are primarily intended for networking, introduction, business networking, charitable services, and personal development. As the respective goods and services can be distinguished based on their intended purposes and target consumers, they should be found to be similar to an average degree.*"

35. For the purposes of my assessment, I will consider the degree of similarity between the respective goods and services to determine whether a higher-than-average degree of similarity occurs.

[14] Holder's submissions in lieu at [35] and [36].

Class 9

- "*Downloadable mobile application software for social media and social networking purposes*"

36. The Opponent's specification in class 9 features the term "*downloadable software in the nature of a mobile application personal and social networking, personal and social introduction, networking*". Albeit worded differently, the respective terms are identical.

Class 42

- "*Providing a website featuring non-downloadable software for social media and social networking purposes*"

37. The Applicant's services essentially consist of the provision of an online (i.e., via a non-downloadable software) social media/networking website. The Opponent's specification in class 42 contains the term "*hosting an online website community for registered users to share information, photos, audio and video content for the purposes of personal and social networking, personal and social introduction, networking*". Thus, I find that the Opponent's services fall within the wider scope of the contested term. It follows that the respective terms are identical in line with the principle outlined in *Meric*.

Class 45

- "*Online social networking services; providing a website for the purpose of social networking*"

38. The Applicant essentially provides services of online social networking (also via a website). The Opponent's specification in class 45 features the term "*[…] personal and social networking […] services provided via a software application for portable electronic devices*". The respective services share the same nature (online social networking), intended purpose and user. I appreciate that the Opponent's services are provided via a mobile application whereas the Applicant's services are provided via a website, however, I find the method of use to be very similar: the users will

use a device (a computer or a mobile phone) to access the software application or website and obtain the services (social networking). Furthermore, the services overlap in their providers, trade channels and are in competition with each other. Overall, I find the services to be highly similar.

The average consumer and the purchasing act

39. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer,* Case C-342/97.

40. 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.

41. The average consumer for the goods and services at hand is the end user for social media/social networking applications and platforms. The Opponent did not provide submissions on this point.

42. I agree with the Holder that the relevant public can encompass both the general public at large as well as professionals using the applications and platforms (especially social networking platforms for the professionals).[15] I also agree with the Holder that the goods and services are provided online on websites, application stores, and online portals and, thus, the goods and services will likely be primarily purchased visually.[16] However, the goods and services may be subject to verbal recommendations (e.g., recommendations from users of the applications/platforms). I therefore cannot completely disregard the aural comparison.

43. I agree with the Holder that, due to the nature of the goods and services, consumers are unlikely to purchase them habitually and that the purchase will be influenced by the consumers' personal requirements and preferences.[17] However, I find that the cost of the goods and services is relatively low and I do not find that the consumers will "studiously examine" the goods and services leading to a higher-than-average degree of attention when selecting the goods and services. Rather, I find that the relevant consumers from the general public will pay a medium degree of attention. The level of attention paid by the professionals will likely be higher, as the choice of the goods and services may directly impact their business

[15] Holder's submissions in lieu at [38].
[16] Idem at [39].
[17] Idem at [40].

(e.g., the way they present or advertise their business online). However, the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.[18]

Comparison of trade marks

44. It is clear form *Sabel BV v Puma AG*, Case C-251/95 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 the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph [34] of its judgment in *Bimbo SA v OHIM*, Case C-591/12P, that:

> "[…] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant 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."

45. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade 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.

46. The marks to be compared are as follows:

[18] Case T-356/14, [25] – [26].

The Opponent's Earlier Mark (series)	The Holder's IR
bizz BIZZ	FIZZ

Overall impression

47. The Earlier Mark comprises the series of two marks "BIZZ" and "bizz" presented, respectively, in standard upper- and lower-case letters without any stylisation. In *LA Superquimica v EUIPO*, Case T-24/17 (parag. 39), the GC held that such plain word marks protected the word or words contained in the mark irrespective of capitalisation or typeface used. Therefore, the overall impression of the Earlier Mark lies in the word "BIZZ" irrespective of the capitalisation. In the decision I will refer to the Earlier Mark in its upper-case format ("BIZZ") unless otherwise specified.

48. The IR consists of the all-capitalised word "FIZZ" with each letter represented with slightly prolonged, flat ends. The mark's typeface is likely not to be noticed by the consumers and the mark's overall impression lies in the single word that forms the mark.

Visual similarity

49. The Opponent submits that the marks are comprised of four letters and they are identical in three of these four letters ("-IZZ").[19]

50. The Holder contends that the marks differ in their first letter, to which consumers will pay more attention,[20] and that the marks' differences are accentuated by the marks' shortness.[21]

[19] Opponent's statement of grounds at [4].
[20] Holder's counterstatement at [4].
[21] Holder's submissions in lieu at [43].

51. I appreciate that the marks are both four-letter marks that overlap in their last three letters ("-IZZ") and differ in their first letter "F" and "B". However, bearing in mind as a rule of thumb that the beginnings of words tend to have more visual impact than their endings,[22] I agree with the Holder that the consumers are more likely to notice the differences between the marks. The change of one letter to a mark which is only four letters long is more significant than a change of one letter to a longer mark.[23] Overall, I find the marks to have a medium degree of visual similarity.

Aural similarity

52. The Opponent argues that since the marks share three letters out of four, they have a high phonetic similarity.[24] Mr Weaver states that he conducted a research to determine the pronunciation similarities between the letters "b" and "f" to English speakers, especially when these letters are at the beginning of words.[25] The evidence provided consists of three online articles describing the problems children may encounter when learning how to pronounce the letter "f" and how parents can help them with speech therapy.[26] Mr Weaver did not clarify further on this evidence. The evidence reports that children after the age of three should be able to correctly pronounce the letter "f". The Holder argues that since the relevant public at hand is comprised of adults, it is immaterial whether some children, after the age of three, may encounter problems in pronouncing the letters "f" and "b".[27] Absent further clarification from the Opponent, I agree with the Holder that this evidence is immaterial for my assessment.

53. Mr Weaver also provides evidence consisting of the results from the artificial intelligence platform Claude after being asked to compare the sounds of "FIZZ" and "BIZZ".[28] The AI tool indicates that these words share three identical phonemes and only differ in their initial consonant and it concludes that the words

[22] *El Corte Ingles, SA v OHIM* (Cases T-183/02).
[23] I refer to the finding of Mr Iain Purvis Q.C. (as he then was), acting as the Appointed Person in BL O/277/12, who stated: "In considering visual similarity, it was clearly right to take into account the shortness of the marks, since a change of one letter in a mark which is only 4 letters long is clearly more significant than such a change in a longer mark."
[24] Opponent's statement of grounds at [4].
[25] Mr Weaver's witness statement dated January 2024 at [11] and Mr Weaver's witness statement dated August 2024 at [8].
[26] Exhibit JSW7 and exhibit JSW4A.
[27] Holder's submissions in lieu at [21] and [26].
[28] Mr Weaver's witness statement dated 22 August 2024 at [7].

are “highly similar in form”.[29] Mr Weaver does not provide further clarification on this evidence. With regard to this part of the evidence, I note that my assessment must be conducted based on how the average consumer would pronounce the marks. Thus, I find that the AI-derived evidence does not have any probative value for my assessment. I will not further refer to this part of the evidence.

54. The Holder submits that the marks present clear aural differences due to their different beginnings (i.e., the first letter “F” and “B”).[30]

55. The marks are both one-syllable words that verbally overlap in their ending “-IZZ” and differ in their first letter. I find that the relevant consumers will pronounce “FIZZ” according to its dictionary definition, whereas they will voice “BIZZ” like the first part of the word “business” (i.e., “biz-nes”). Therefore, the marks share the same sound “-IZZ” and differ in the sounds made by their respective first letters “B” and “F”. I find the marks have an above-medium aural similarity.

Conceptual similarity

56. It is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.[31]

57. Regarding the meaning of “FIZZ”, the Opponent did not provide specific submissions on this point.

58. Ms Grove provided dictionary definitions for “FIZZ” from the Oxford and Cambridge English dictionaries. These dictionaries report that “FIZZ”, as a verb, means to make a hissing or sputtering sound,[32] intended as a liquid that produces bubbles and makes a continuous “s” sound.[33] As a noun, the dictionaries report that “FIZZ” means “something that fizzes” (e.g., a drink) or “bubbles of gas in a liquid”.

59. I find that the average consumer will immediately understand the common dictionary word “FIZZ” as the noun indicating effervescence in line with the meaning shown in the Holder’s evidence.

[29] Exhibit JSW3A.
[30] Holder’s submissions in lieu at [44].
[31] *The Picasso Estate v OHIM*, Case C-361/04 P.
[32] Exhibit CG1, page 3.
[33] Exhibit CG1, page 7.

60. Turning to the meaning of "BIZZ", Mr Weaver reports that he researched the Cambridge dictionary to ascertain the definition of the word "BIZZ".[34] The dictionary extracts provided do not show any definition for this word and provide a list of different words as a suggestion instead of "BIZZ".[35] Absent further clarification from Mr Weaver, I believe the evidence is intended to show that "BIZZ" does not have a dictionary definition.

61. The Holder contends that the marks are conceptually dissimilar in that "FIZZ" refers to something that fizzes whereas "BIZZ" is a variant spelling of "biz" meaning "business".[36] Ms Groves provides extracts showing that "BIZZ" is used in marketing as a short advertising form for "business". Most of the evidence is dated after the IR's filing date. One extract dated within the relevant date features the name "Networking Bizz Website Design Experts" for website design solutions for businesses.[37]

62. Notwithstanding the evidence provided by the Holder, it is my view that a significant proportion of the relevant consumers is likely to understand "BIZZ" as meaning "business". Therefore, it follows that I find the mark to be conceptually different. However, I bear in mind that a separate, significant proportion of the relevant consumers is likely to perceive "BIZZ" as a neologism and attach no meaning to it. Also in this case I find the marks to be conceptually different.

Distinctive character of the earlier marks

63. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-

[34] Mr Weaver's witness statement dated 22 January 2024 at [10].
[35] Exhibit JSW6, page 1.
[36] Holder's submissions in lieu at [45].
[37] Exhibit CG4, pages 38.

108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee,* paragraph 51)."

64. 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/services, 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 that has been made of it.

65. Although the distinctiveness of a mark may be enhanced as a result of it having been used in the market, the Opponent has filed no evidence of use of its mark. Accordingly, I have only the inherent position to consider.

66. As already indicated above, the Holder argues that "BIZZ" means "business". Accordingly, the Holder contends that the Opponent uses "BIZZ" in a descriptive manner in relation to its business networking services.[38] Ms Groves' evidence shows that the Opponent uses the term "Bumble Bizz" to advertise its professional social networking services to "*make connections with potential employers, experts in your field, recruiters and fellow professionals*".[39] The Holder also points out that even if "BIZZ" were to be considered a misspelling of "BIZ", such misspelling is

[38] Holder's submissions in lieu at [50].
[39] Exhibit CG7, page 188.

insufficient to make the Earlier Mark distinctive. Overall, the Holder contends that the Earlier Mark possesses a very low distinctive character.[40]

67. The Opponent did not file any evidence and/or submissions in this regard.

68. Regarding the proportion of consumers that will understand the Earlier Mark with the meaning of "business", I find that the mark to be allusive in relation to goods and services for social networking in that there is a close semantic correlation between the concepts of business and networking. Hence, I find the Earlier Mark to have a below-medium inherent distinctiveness. Regarding the section of consumers who will perceive the Earlier Mark as devoid of any meaning, I find the mark to be a neologism without any semantic correlation with the goods/services at hand and, thus, possessing a high degree of distinctive character.

Likelihood of confusion

69. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep 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]).

70. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).

71. I found the respective goods and services to be identical or highly similar. Part of the relevant public could be professionals who would pay a higher level of attention, but another part of the relevant public will be members of the general public who will demonstrate a medium degree of attention. I will assess the likelihood of confusion from the perspective of the general public since they are the group who will pay the lower degree of attention. The distinctiveness of the Earlier Mark varies

[40] Holder's submissions in lieu, at [50].

from below medium to high according to the meaning that the relevant consumers will attribute to "BIZZ". The marks have a medium visual similarity, an above-medium aural similarity and they are conceptually different irrespective of how the relevant consumers will understand the word "BIZZ".

72. I begin by considering a likelihood of direct confusion.

73. Whilst the words "FIZZ" and "BIZZ" share three out of four letters, both are short words, and as the beginnings of a word tend to have more impact than the ends,[41] the different letters will not go unnoticed. I am conscious that there is no special test for short marks;[42] however, as "FIZZ" and "BIZZ" consist of only four letters, the differences between them are more likely to be noticed. Furthermore, the mark's conceptual difference, irrespective of whether the relevant consumers would attribute a meaning to "BIZZ", removes even further any similarity between the marks.

74. Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for consumers, paying a medium level of attention, to distinguish between them and avoid mistaking them for one another. Accordingly, notwithstanding the principles of imperfect recollection and interdependency, it follows that there will be no direct confusion, even taking into account that the goods and services in question are identical (or highly similar) and those instances where the Earlier Mark's distinctiveness is high.

75. It now falls to me to consider the likelihood of indirect confusion. The concept of indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "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

[41] *El Corte Ingles, SA v OHIM* (Cases T-183/02).
[42] *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20, paragraph 43.

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)".

76. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.[43] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[44] The Court of Appeal has also emphasised

[43] *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.
[44] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.[45]

77. I do not see how the consumers, upon noticing the differing letters "F" and "B" at the beginnings of the marks and finding the marks to have different meanings (irrespective of whether "BIZZ" is perceived as meaning "business" or not), would perceive the IR as originating from the Earlier Mark. Therefore, I do not find that there is a proper basis for any likelihood of indirect confusion to occur.

CONCLUSION

78. The opposition fails under section 5(2)(b) of the Act.

79. The Holder has been successful. Subject to any successful appeal, the application by Fizz Social Corp for the IR, designating the UK, may proceed to registration.

COSTS

80. The Holder is entitled to an award of costs. As the opposition was lodged before the 1 February 2023, relevant scale is contained in Tribunal Practice Notice ("TPN") 2/2016. Bearing that scale in mind, I award costs to the Holder as follows:

Considering the notice of opposition and preparing the counterstatement	£200
Preparing evidence and considering and commenting on the other side's evidence	£500
Submissions in lieu of a hearing	£300
Total:	**£1,000**

81. I order Bumble Holding Limited to pay Fizz Social Corp the sum of **£1,000**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

[45] *Liverpool Gin Distillery*.

Dated this 22nd day of May 2026

Andrea Rossi

For the Registrar