

O/0450/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4086032
IN THE NAME OF ATOR LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:**

ORAG

IN CLASS 3

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 450900
BY LOUIS VUITTON MALLETIER**

Background and pleadings

1. Ator Limited (“the applicant”) applied to register the trade mark “ORAG” in the UK on 10 August 2024, under number 4086032. It was accepted and published in the Trade Marks Journal on 23 August 2024 in respect of the following goods:

Class 3: Cosmetic preparations; Cleaning preparations; Cleaning and fragrancing preparations.

2. LOUIS VUITTON MALLETIER (“the opponent”) opposes the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the goods and is based on its UK trade mark “ORAGE” under number 917553413 (“the opponent’s mark”). The opponent’s mark was filed on 1 December 2017 and became registered on 19 March 2018. It stands registered for range of goods in class 3. However, for opposition purposes, the opponent relies only on the following goods:

Class 3: Perfumery; Perfume.

3. The opponent’s mark qualifies as an ‘earlier trade mark’ in accordance with section 6 of the Act. The earlier mark had been registered for more than five years at the filing date of the applicant’s mark and is, therefore, subject to the use requirements in section 6A of the Act. The Opponent has made a statement of use, and the applicant has put the opponent to proof of use for all the goods relied upon in these proceedings.

4. In its statement of grounds, the opponent argues that the competing marks are highly similar, and that the parties’ goods are identical or highly similar. On this basis, the opponent submits that there is a likelihood of confusion, including a likelihood of association.

5. The applicant filed a counterstatement denying the ground of opposition.

6. The opponent is professionally represented by Gill Jennings & Every LLP, and the applicant is represented by Olisa Aligbe. During the evidence rounds, both parties filed evidence and the opponent filed submissions. No hearing was requested but both parties filed submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Evidence

7. The opponent's evidence consists of three witness statements. The first was provided by Laurent Valliez (dated 30 April 2025). He states that he is a Senior Legal Advisor of the opponent in these proceedings. He has filed Exhibits LV1 to LV8. These show a range of information, such as the opponent's website, product listings, sales invoices, and screenshots of social media posts and magazine articles. The second witness statement was provided by Erika Downs (dated 20 May 2025). She has translated the press articles in Exhibit ED1. The third witness statement was provided by Mr Valliez (dated 30 September 2025). He responds to the applicant's evidence and also provides Exhibits LV9 to LV14 which show a range of screenshots from websites such as WayBack Machine and Companies House.

8. The applicant's evidence consists of a witness statement provided by Olisa Aligbe (dated 31 July 2025). He states that he is the Director of the applicant in these proceedings. He has filed Exhibits OEV1 to OEV9. These show a range of information, such as the applicant's product range, as well as screenshots of the applicant's social media accounts, customer orders, WayBack Machine, and Companies House.

9. I have taken all the evidence into account in reaching my decision and will refer to it below where necessary.

Relevance of EU law

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018¹ 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.

Proof of use

11. Section 6A of the Act reads as follows:

“(1) This section applies where –

¹ As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

- (a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and
- (b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

12. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It is as follows:

“(1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

...

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day-

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.”

13. Pursuant to the above provisions, the relevant period for assessing whether there has been genuine use of the opponent’s mark is the five-year period ending with the filing date of the applicant’s mark, i.e. 11 August 2019 to 10 August 2024. Within this period, the relevant territory is the EU for the period up to 31 December 2020 and the UK thereafter.

14. In *easyGroup Ltd v Nuclei Ltd & Ors*,² Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider*

² [2023] EWCA Civ 1247

Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37]. (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*

at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23]. (5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

15. Moreover, section 100 of the Act states that:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Relevant territory

16. In his first witness statement, Mr Valliez states that the opponent is “a French luxury fashion house, founded in 1854 by Louis Vuitton and is one of the world’s leading international fashion houses”.³ He states that as the opponent’s mark is a comparable UK trade mark, he understands that he has included use of the mark in the EU between 10 August 2019 to 31 December 2020. In his witness statement, Mr Aligbe states that “the opponent’s reliance on foreign media articles and general product descriptions does not establish actual trading or consumer recognition in the UK” and that the opponent’s “invoices and exhibits largely relate to transactions outside the UK or contain redacted information that prevents confirmation of genuine UK trade”. However, the UK was part of the EU until IP completion day on 31 December 2020, and therefore the EU is the relevant territory for the years 2019 and 2020. I have therefore taken into account the documents submitted in relation to EU countries for this part of the relevant period up to 31 December 2020.

Sales figures

17. In his first witness statement, Mr Valliez states that the opponent has sold “over 4,800 fragrance items bearing the mark ORAGE in the United Kingdom from 2021 to 2024”. In its submissions in lieu, the opponent reasons that the total of items sold in the UK between 2021 and 2024 “is a significant figure” given the “high price of each unit sold, which vary between £120-£380”. However, there is not a year-by-year breakdown of the total amount of items sold or any accurate turnover figures. The sales figures given are supported by a number of invoices in Exhibit LV7 within the relevant period for the UK and in Exhibit LV8 for the EU. These invoices show sales of perfume bearing the opponent’s mark across the UK in London, Birmingham, Manchester, and Leeds. He also provides sales invoices for the opponent’s customers based in France, Germany, Italy, and Spain for the relevant period within the EU.

³ Page 1, para 3

18. In his witness statement, Mr Aligbe argues that the “opponent's invoices contain redacted details, including vendor names and addresses, preventing verification of the UK-based nature of the transactions. This undermines the opponent's ability to prove genuine use of the "ORAGE" mark in the UK”. In its submissions filed during the evidence rounds, the opponent states that “while sensitive customer information had been redacted, the invoices clearly demonstrate the sale of goods under the mark marks ORAGE”. It therefore denies this undermines the ability of the opponent’s evidence to show genuine use.

19. I have considered the parties’ submissions on this matter, and it is my view that the redaction of customer information on invoices is acceptable. This is because the invoices in LV7 clearly show the address where the sale was made, the product(s) sold, and the date of the sale. The redaction of sensitive customer data is therefore reasonable in the circumstances, and does not affect my ability to ascertain whether or not genuine use of the opponent’s mark has been made.

Marketing activities

20. Exhibits LV1 and LV2 contain screenshots of the opponent’s website (<https://uk.louisvuitton.com>). Some of these are dated within the relevant period and obtained via the WayBack Machine (such as those on pages 5 to 9), but some appear to be screenshots taken directly from the website and are undated (such as those on pages 10 to 13). Furthermore, the majority of the screenshots in Exhibit LV1 do not relate to perfume. Exhibit LV2 shows also screenshots of the opponent’s website obtained via WayBack Machine. Pages 15 and 16 show the opponent’s mark on perfume products available for sale within the relevant period.

21. Exhibit LV3 shows several screenshots of social media posts made on Instagram by the opponent. In its submissions in lieu, the opponent acknowledges that one of the screenshots in Exhibit LV3 shows a post made in 2018, which falls outside of the relevant period. However, the remaining screenshots within the exhibit are all dated within the relevant period. I acknowledge that in its submissions in lieu, the opponent states that these were included “to show that there has been continuous marketing and sale of the relevant goods by the Opponent under the mark ORAGE over a long period of time, thereby creating and preserving a UK and EU market share”. Although

I acknowledge the inclusion of this evidence for contextual reasons (as per *Laboratoire de la mer*⁴), it is my view that the pieces of evidence which fall within the relevant period form the key basis of my analysis of use, and therefore I have focussed on them. The post captions themselves in the screenshots are written in English, so they appear to be aimed at the English-speaking market.

22. In Exhibits LV4, LV5, and LV6, Mr Valliez provides examples of press coverage relating to the opponent's mark. Although the Vogue article falls outside of the relevant period dated 26 April 2018, the majority of the exhibits are within the relevant period. There is no information in relation to this press coverage as to the number of readers or viewers or where the readers were based, so it is not possible to understand the impact that this press coverage would have had on EU or UK consumers within the relevant period.

23. Exhibit LV6 also shows two screenshots of YouTube videos featuring the opponent's perfume bearing its ORAGE mark. The screenshots show that the video review by Aaron Terence Hughes on 11 March 2023 had 26,158 views and the School of Scent video review on 25 May 2024 had 129,953 views. However, there are no details as to how many views were from consumers in the EU before 31 December 2020 and from the UK thereafter within the relevant period, so it is not clear how many UK consumers were exposed to this press coverage.

Forms of the mark

24. Throughout the exhibits, the mark is shown on the goods in a very basic typeface. For example, on page 18 in Exhibit LV2 the mark is shown as follows:

⁴ C-259/02



25. In *LA Superquimica v European Union Intellectual Property Office (EUIPO)*,⁵ the General Court (“GC”) held at [39] that word-only marks protect the word or words contained in the mark in whatever case, colour or typeface. As the opponent’s mark is a word-only mark, it is protected in any form. I find that the use of the mark in black in a very basic typeface is therefore use of the mark as registered.

26. Throughout the exhibits, the ORAGE mark is used in conjunction with the house mark LOUIS VUITTON. Paragraph 35 of *Colloseum*⁶ states that when a mark is “used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin”. On this basis, I find that the use of the ORAGE mark alongside the house mark LOUIS VUITTON is also acceptable for showing use of the opponent’s ORAGE mark.

Sufficient use

27. The evidence has its limitations. As stated previously, there is no breakdown of sales figures across the relevant period. In addition to this, there are also no details in relation to the size of the relevant market or the share of that market held by goods bearing the opponent’s mark. There are no details on the amount spent on advertising, and it is not clear how many consumers in the relevant territories have been exposed to the social media marketing activities. Furthermore, as the opponent acknowledges

⁵ Case T-24/17

⁶ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

in its submissions, some of its evidence is not dated or falls outside of the relevant period.

28. However, an assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole.⁷ The evidence establishes that sales were made during the relevant period to a number of different customers across the UK in the opponent's stores. In addition to this, whilst the evidence does not provide any indication of market share or specific sales figures, Mr Valliez states in his witness statement that the opponent sold over 4,800 fragrance items bearing the opponent's mark in the UK in 2021 to 2024. Based on the price points provided, I calculate this to be in the region of around £0.5m to £1.8m during this period. These figures are supported by the invoices, which show sales to a number of different customers in several EU countries in 2019 and 2020 and also in the UK during the years 2021 to 2024. Whilst limited in number, these documents show dated evidence that the sales were reasonably geographically widespread in the relevant territories. On the face of it, the figures provided seem very modest in the context of the market for *perfume* and *perfumery*, which I understand to be relatively large. Moreover, I acknowledge the opponent's submission in its submissions in lieu that, in line with the authorities cited above, there is no de minimis rule, and use does not need to be quantitatively significant for it to be considered genuine. Taking the evidential picture as a whole, i.e. the turnover figures and the invoices which demonstrate sales made in the EU and UK in the relevant period, I am satisfied that there has been genuine use of the opponent's mark on *perfume* and *perfumery*. For the purposes of the opposition, I therefore find that the opponent may rely on *perfume* and *perfumery*.

Section 5(2)(b)

29. Section 5(2)(b) of the Act reads as follows:

“5(2) A trade mark shall not be registered if because –

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

⁷ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T-415/09

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

30. 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.”

31. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*:⁸

- (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;

⁸ [2025] UKSC 25

- (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;
- (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

32. In *Canon*⁹, the CJEU stated, at paragraph 23 of its judgment, that when considering whether goods are similar, all the relevant factors relating to the goods should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

⁹ Case C-39/97

33. The relevant factors identified by Jacob J. (as he then was) in *Treat*¹⁰ 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.

34. In *Kurt Hesse v OHIM*¹¹, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*¹², the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

35. In *Gérard Meric v OHIM*,¹³ the GC confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

¹⁰ [1996] R.P.C. 281

¹¹ Case C-50/15 P

¹² Case T-325/06

¹³ Case T- 133/05

“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.”

36. The goods to be compared are as follows:

The opponent's goods	The applicant's goods
<u>Class 3: perfumery; perfume.</u>	<u>Class 3: Cosmetic preparations; Cleaning preparations; Cleaning and fragancing preparations.</u>

37. The opponent and applicant have both made several arguments in relation to the similarity of the goods. I will refer to the parties' individual submissions made in relation to the specific goods below. However, in its counterstatement, the applicant also argues the general point that “my branding and product positioning clearly separate my goods from traditional perfumery products”. This line of argument is reiterated in its submissions in lieu, in which the applicant has also argued that its goods “are positioned in a distinct market segment with unique packaging, branding, and price points”.

38. Insofar as the applicant's claimed uses of different branding, packaging, product position, price points, and within market segments are concerned, as per the CJEU judgement in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*¹⁴ (particularly paragraph 66), it is necessary to consider all the circumstances in which the applicant's mark might be used. As a result, even though the applicant has suggested that the opponent sells their products using different branding, packaging, and product placement, or within different market segments, my assessment must take into account only the opponent's mark and any potential conflict with the applicant's mark. Any differences between the actual goods provided by the parties, or differences in their branding, packaging, price points or market segments, are not

¹⁴ Case C-533/06

relevant unless those differences are apparent from the competing marks and their specifications.

39. For the purposes of comparing goods, 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.¹⁵ I have therefore assessed the applicant's goods by dividing the terms into groups as per below.

[...] fragrancng preparations.

40. In its counterstatement, the applicant submits that “My cleaning and fragrancng preparations” do not fall under the category of perfumery or perfume. Instead, they refer to home fragrance products such as air fresheners and surface cleaners, which serve different purposes, are marketed differently, and target a different consumer base”. In its submissions in lieu, the opponent submits in response that “the goods are not limited to home fragrancng products...but will contain a wide range [of] cleaning or fragrancng goods, whether they are for use on the body or other uses, including in the home, office or car”. It therefore argues that the parties’ goods are similar.

41. It is my understanding that *fragrancng preparations* are goods which provide fragrances. The opponent’s goods *perfumery* and *perfume* and *fragrancng preparations* are essentially the same, albeit using different terminology. They are therefore identical. However, as the opponent has only pleaded that these goods are similar, I find that they are similar to a very high degree instead.

Cosmetic preparations.

42. In its submissions in lieu, the opponent submits that these goods are “often scented and share the same trade channels and are normally produced by the same undertakings as perfumery goods”. It therefore argues that the parties’ goods are either identical as per the *Meric* principle, or if not identical, then it submits in the alternative that they are “very similar”. Although the applicant pleads in the

¹⁵ *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

counterstatement that the parties' goods are different¹⁶, it has not provided specific arguments to explain why.

43. The applicant's *cosmetic preparations* are very broad, and refers to a number of different cosmetic goods such as make-up, which are similar to the opponent's goods. The goods' natures overlap as both may be sold as liquids or in solid form. The users of both will be the general public. Although the primary purpose of *cosmetic preparations* (such as make-up) is to improve a user's appearance, there may be an overlap where the *cosmetic preparations* are scented, given that the purpose of *perfumes* is to impart a scent on the user. Moreover, there is a further element of overlap in that they are both used within the grooming process. They are typically sold through the same trade channels, and are likely to appear within close proximity to each other within retail environments. In my experience, it is not uncommon for the manufacturers of *perfumes* to offer bundles of perfumes and cosmetics such as make-up sold together as gift items. It would therefore not be unreasonable for the average consumer to mistakenly assume that the competing goods derive from the same undertaking. However, as the goods are not indispensable or important to one another, I do not find complementarity between the goods. I also do not consider them to be in competition with one another, given the goods' differences in core purpose. Taking all these factors into account, I find the competing goods to be similar to a medium degree.

Cleaning preparations; Cleaning [...] preparations.

44. In its submissions in lieu, the opponent argues that the term is broad and "could include soaps, shower gels and other goods for cleaning the body, which are often scented to give a pleasant scent to one's body". It submits that these goods "have similar channels of trade and are likely to be found in close proximity to each other on supermarket shelves". It therefore argues that the goods are similar. In the applicant's counterstatement, it argues that the opponent's *perfumes* and *perfumery* are different from the applicant's *cleaning preparations*. It argues that the latter "refers to home fragrance products such as air fresheners and surface cleaners, which serve different purposes, are marketed differently, and target a different consumer base".

¹⁶ Under the heading 'difference in the goods and their use'

45. It is my understanding that the term *cleaning preparations* is broad and covers goods which have the purpose of cleaning. I agree with the opponent that the goods are broad enough to encompass a range of goods which clean, such as soap and shower gels. As such, there will be an element of similarity between these goods and the opponent's *perfume*.

46. The goods' natures overlap as both may be sold as liquids or in solid form. The users of both will be the general public. Although the primary purpose of *cleaning preparations* (such as soaps and shower gels) is to clean the user, there may be an overlap where the *cleaning preparations* are scented, given that the purpose of *perfumes* is to impart a scent on the user. Moreover, there is a further element of overlap in that they are both used within the grooming process. In my experience, it is not uncommon for the manufacturers of *perfumes* to offer bundles of *perfumes* and *cleaning preparations* such as soaps and shower gels sold together as gift items. It would therefore not be unreasonable for the average consumer to mistakenly assume that the competing goods derive from the same undertaking. However, as the goods are not indispensable or important to one another, I do not find complementarity between the goods. I also do not consider them to be in competition with one another, given the goods' differences in core purpose. I therefore consider the applicant's broad term *cleaning preparations* to be similar to the opponent's *perfume* to a medium degree.

Average consumer and the purchasing act

47. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,¹⁷ the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,¹⁸ 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;

¹⁷ [2025] UKSC 25

¹⁸ [2024] EWCA Civ 262

- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

48. In its submissions in lieu, the opponent submits that the average consumer will pay "at best an average degree of attention". In its counterstatement, the applicant argues that "Consumers in the fragrance and cleaning industry are discerning and accustomed to distinguishing between personal perfumes and home or cleaning fragrances". However, it has not submitted any evidence to show that consumers of these goods are particularly discerning or offered an explanation for why this would be the case.

49. The goods are ordinary consumer goods, and the average consumer for the goods will be members of the general public. The cost of purchase is likely to vary

considerably, with inexpensive cleaning preparations such as soap, for instance, at one end of the spectrum and luxury perfumes at the other. Overall, the goods are likely to be purchased on a fairly frequent basis. Several factors may influence the average consumer when purchasing the goods, such as the type of fragrance emitted, the safety of the ingredients, and whether the product is tested on animals. Based on these factors, I find that the average consumer is likely to pay a medium level of attention when purchasing the goods. The goods will be selected from specialist shops (such as perfume shops or homeware stores), general retail outlets, or online. The customer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the purchasing process, but I do not discount aural considerations, such as word-of-mouth recommendations, or placing telephone orders.

Comparison of marks

50. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*¹⁹ that:

“...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

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

¹⁹ Case C-591/12P

52. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
ORAGE	ORAG

53. In its submissions in lieu, the opponent submits that both marks are word-only marks, and therefore the overall impression lies solely in the words. The applicant does not comment specifically on the competing marks' overall impressions.

54. The opponent's mark is a plain word mark with the word "ORAGE" written in upper case. With no further elements within the mark, the mark's overall impression lies solely in the word "ORAGE".

55. The applicant's mark is a plain word mark with the word "ORAG" written in upper case. With no further elements within the mark, the mark's overall impression lies solely in the word "ORAG".

Visual comparison

56. In its submissions in lieu, the opponent argues that "the only meaningful difference between the Opponent's mark and the Application is the additional letter "E" at the end". It submits that as this occurs at the end of the mark, the marks are visually highly similar. In its submissions in lieu, the applicant submits that the competing marks "differ clearly in appearance".

57. The competing marks are visually similar as the applicant's four-letter mark "ORAG" is identical to the first four letters of the opponent's mark "ORAGE". The competing marks differ visually as the opponent's mark also contains the letter "E" at the end of the mark. The beginnings of words tend to have more visual and aural impact than the ends,²⁰ which, in my view, results in the visual difference created by the additional letter "E" at the end of the opponent's mark being less significant. Taking these factors into account, I am of the view that the marks are visually similar to a high degree.

²⁰ See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Aural comparison

58. In its submissions, the opponent submits that “while the additional letter E is likely to soften the ending of the opponent’s mark a little, phonetically, there is a high degree of aural similarity between the two marks”. In its submissions in lieu, the applicant submits that ““ORAG” is a short, hard-ending mark (pronounced “O-RAG”), while “ORAGE” has a soft, French-derived ending (pronounced “oh-RAZH”)”.

59. Whilst the applicant has referred to the opponent’s mark having a “French-derived ending”, there is no evidence to suggest that the average consumer in the UK would understand or would recognise it as a French word or understand how to pronounce it with the French pronunciation. Whilst I acknowledge that there will be some consumers who speak French, it is my view that they will not constitute a significant proportion of consumers within the UK. Moreover, whilst French is considered to be one of the more commonly understood European languages, the word ORAGE is unlikely to be a word with which UK consumers would be familiar (unlike ‘bonjour’ or ‘baguette’). Furthermore, the goods are also not aimed at a specific section of the public (e.g. French speakers). On this basis, I am of the view that the vast majority of consumers will not adopt the French pronunciation of the words. Instead, it is my view that the opponent’s mark will be pronounced “oh-rage”, in line with the English pronunciation of the recognisable components within the mark (‘o’ and ‘rage’). For the same reasons, I am of the view that the applicant’s mark will be pronounced as “oh-rag”.

60. The competing marks are therefore aurally similar as they both contain two syllables. Their first syllable will be pronounced in the same way (“oh”), and the second syllables are similar to one another in that they both begin “ra-”. The beginnings of words tend to have more visual and aural impact than the ends²¹, which, in my view, results in the identical nature of the first syllable and the start of the second syllable increasing the aural similarity between the competing marks.

61. The competing marks differ aurally as the opponent’s second syllable will be pronounced “rage” (to rhyme with “sage”) whereas the applicant’s will be pronounced “rag” (to rhyme with “sag”). However, under the principle in *El Corte Inglés* (cited

²¹ See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

above), the aural difference created by the phonetic difference occurring at the end of the mark is less significant. Taking these factors into account, I am of the view that the marks are aurally similar to between a medium and high degree.

Conceptual comparison

62. In its submissions, the opponent submits that “the average English speaking consumer will not instantly appreciate the meaning of the French word ORAGE, and therefore, the two marks should be considered conceptually neutral”. In its submissions in lieu, the applicant explains that its mark “originates from the initials of the Applicant’s founders (Olisa, Ruta, Aligbe, Goitom), establishing a personal and distinctive identity entirely unrelated to the Opponent’s brand”. It therefore submits that “Conceptually, the Applicant’s mark has personal significance, whereas “ORAGE” (meaning “storm” in French) has a descriptive or evocative character unrelated to the Applicant’s goods or business”.

63. Neither “ORAG” or “ORAGE” are defined in the Cambridge English Dictionary, and I am not aware of either of these words being English in origin. As I have explained above, whilst there will be some consumers in the UK recognise the word “ORAGE” as the French word for “storm”, they will not form a significant proportion of consumers within the UK. Furthermore, it is not a cognate of the English word, and therefore it is unlikely that the average UK consumer will understand it as the word for ‘storm’ based on it resembling the English word. Instead, it is my view that a significant portion of consumers would be understand the word “ORAGE” as an invented term with no specific meaning. As such, it will not convey a conceptual message to the average consumer in the UK. Whilst the applicant has explained the meaning of its mark, there is nothing to suggest that this meaning will be understood by the average consumer of the goods. It is therefore my view that a significant proportion of consumers would also understand the word “ORAG” as an invented term with no specific meaning. As neither mark conveys a conceptual message, I am therefore of the view that the marks are conceptually neutral.

Distinctive character of the earlier mark

64. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,²² the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

65. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods.

66. Neither party has commented directly on the inherent distinctiveness of the earlier mark. However, in its submissions in lieu, the applicant argues that ““ORAGE” (meaning “storm” in French) has a descriptive or evocative character”.

²² Case C-342/97

67. As stated previously, the word “ORAGE” will be understood by a significant proportion of consumers as being a neologism. Whilst the applicant has argued that this term has a “descriptive or evocative character”, it does not explain why the French word for “storm” would describe perfume goods, or what it evokes in relation to them. Instead, it is my view that the word would be understood as an invented term with no descriptive or allusive link to the goods. As such, the opponent’s mark has a high level of inherent distinctive character.

68. Although the opponent has filed evidence of use, I do not consider this evidence to be sufficient for the purposes of demonstrating that the opponent’s mark had an enhanced degree of distinctive character at the relevant date of 10 August 2024. Whilst I acknowledge that the evidence demonstrates genuine use of the opponent’s mark and sales of ORAGE-branded goods into the UK, it is considered that the evidence does not show what share of the relevant market was held by goods sold under the opponent’s mark. Whilst the evidence contains UK unit sales figures for 2021 to 2024 as well as a number of sales invoices, I am unable to ascertain how significant those sales were. On the face of it, the sales figures are likely to only represent a reasonably small proportion of the relevant UK market for perfume goods. Furthermore, although the evidence contains screenshots of the opponent’s social media posts, press coverage, and reviews on YouTube, it is my view that this is not sufficient to demonstrate the extent to which the average consumer of the goods within the relevant territories has been exposed to the opponent’s mark. In addition to this, the evidence contains no figures in relation to advertising spend in the UK. Taking all of these factors into account, I find that the opponent has not demonstrated an enhancement to the distinctiveness of the earlier mark.

Global assessment – conclusions on likelihood of confusion

69. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

70. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

71. In its submissions in lieu, the opponent submits that there is a likelihood of confusion, including a likelihood of association, on the basis "that the marks are very similar and that the respective goods are similar". In its submissions in lieu, the applicant denies the likelihood of confusion and contends that "no instances of consumer confusion, mistaken association, or dilution have been demonstrated". It also submits that "the Opponent's reputation does not extend to the Applicant's trade channels or consumer base. Consequently, there is no likelihood of confusion or unfair advantage".

72. Firstly, I must clarify that I am unable to consider the applicant's arguments in relation to dilution or unfair advantage. This is because oppositions based on dilution or unfair advantage are brought under section 5(3), whereas the current opposition is based on section 5(2)(b) only.

73. Secondly, in *Roger Maier and Another v ASOS*,²³ Kitchen L.J. stated that:

"80. ...the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been

²³ [2015] EWCA Civ 220

used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”

74. In *The European Limited v The Economist Newspaper Ltd*²⁴ stated that:

“Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff’s registered trade mark”.

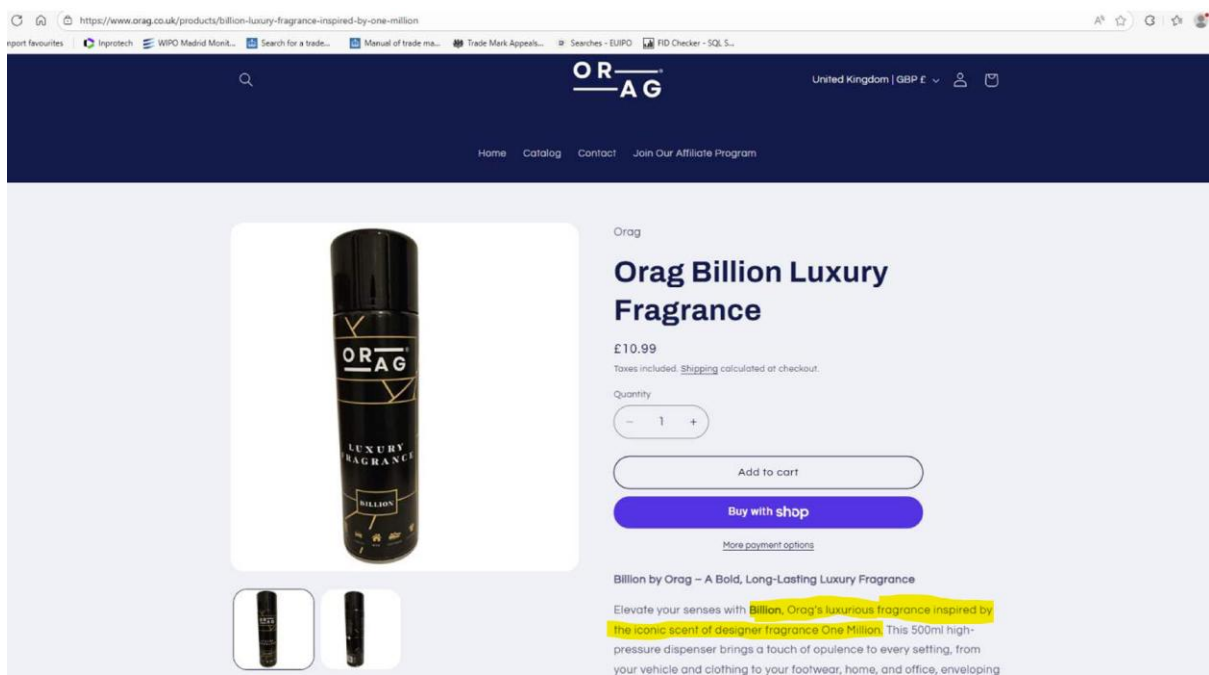
75. As there is no evidence that consumers have become accustomed to differentiating between the competing parties’ marks, the opponent’s lack of evidence to show actual confusion cannot be taken as evidence per se that the marks are peacefully coexisting in the marketplace. I therefore do not find this a significant factor when assessing the likelihood of confusion between the competing marks.

76. In its submission in lieu, the opponent also argues that “the opponent’s evidence of the applicant’s use of its mark in relation to goods which have a similar scent to well-known ‘designer’ perfumes is part of the global picture that should be taken into account when assessing the likelihood of confusion between the marks”. This is in response to Exhibits OEV1 to OEV9 filed by Mr Aligbe, showing the applicant’s use of its mark on a range of fragrance products. For example, Exhibit OEV2 shows the following:

²⁴ [1998] FSR 283 Millett L.J.



77. The opponent filed further exhibits to show that the applicant's website appears to state that it produces 'copycat' scents. For example, on page 5 in Exhibit LV9, the applicant's website states the following (my own highlighted added):



78. Whilst I acknowledge the opponent's submissions, these 'copycat' names (such as CRED, LAST CHERRY, and PARADOX, which are cited on the applicant's website as resembling the well-known scents by CREED, LOST CHERRY, and PARADOXE) appear to be used by the applicant as sub-brands or product marks. The goods all

have the different sub-brands/product marks at the bottom of the goods. However, in contrast to this, all the goods additionally bear the same the house brand ORAG at the top of the products. I cannot see any examples where ORAG is shown as being suggestive of the scent for ORAGE, as the house mark ORAG appears on the entire product range. There is nothing to suggest to me that the applicant specifically chose the house mark ORAG as shown on all the products to resemble ORAGE in the same way that it appears to have selected its 'copycat' names for the different fragrances within its product range. Furthermore, even if the evidence has demonstrated this, the opponent has not brought relevant grounds to do so. On this basis, I do not therefore place much weight on this line of argument as part of my global assessment of the likelihood of confusion.

79. Earlier in this decision I found that the applicant's goods range from being similar to a medium degree to a very high degree (in line with the opponent's pleadings) with the opponent's goods. The average consumer of the goods will be the general public. The average consumer is likely to pay a medium degree of attention when selecting the goods. The goods will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a high degree, aurally similar to between a medium and high degree, and conceptually neutral. The earlier mark has a high level of inherent distinctive character.

80. Taking these factors into account and being mindful of the role that imperfect recollection may play, I consider that the average consumer, when paying a medium degree of attention, is likely to misremember the marks' differences and mistakenly recall the marks for each other, leading to direct confusion. It is considered that the high degree of visual similarity and the medium to high degree of aural similarity between the marks, and the earlier mark's high level of inherent distinctiveness are factors which support this finding. Notwithstanding the additional "E" on the end of the opponent's mark and the shortness of the marks (where differences may be more noticeable),²⁵ the difference is at the end of the word and therefore has less impact, especially in light of the remaining similarities between the letters, which are the same and presented in the same order. Consequently, there exists a likelihood of confusion.

²⁵ *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20

I find this to be the case even in relation to goods which are similar to a medium degree due to the highly similar nature of the marks and the interdependency principle.

Conclusion

81. The opposition under section 5(2)(b) has been successful in its entirety. Subject to any successful appeal, the application will be refused registration.

Costs

82. The opponent has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances I award the applicant the sum of £1,600 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fees: £100

Preparing a statement: £300

Preparing evidence and commenting on the other side's evidence £750

Preparing submissions in lieu £450

83. I therefore order Ator Limited to pay LOUIS VUITTON MALLETIER the sum of £1,600. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of May 2026

K SERRAVALLE

For the Registrar