O/0457/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4170817

BY

DANIEL LEE

TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASS 41

AND

IN THE MATTER OF FAST TRACK OPPOSITION

THERETO UNDER NUMBER 600003843

BY K LEONIDAS INTERNET LTD

BACKGROUND & PLEADINGS

1. On 8 March 2025, Daniel Lee ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the contested mark"). The contested mark was published for opposition purposes in the Trade Marks Journal on 18 July 2025 in respect of the following services:

Class 41

Production of music; Music production; Production of music concerts; Production of music shows; Music production services; Production of sound and music recordings; Production of musical videos; Production of musical recordings; Consultancy on film and music production; Production of audio entertainment; Production of musical works in a recording studio; Audio production; Radio entertainment production; Music publishing and music recording services; Production of entertainment in the form of sound recordings; Production of audiovisual recordings; Production of video recordings; Production of audio-visual recordings; Video production; Audio recording and production; Recording of music; Music recording; Production of audio recordings; Production of sound recordings; Performance of music; Production of sound and video recordings; Film production; Music recording studio services; Music performances; Production of educational sound and video recordings; Audio recording and production services; Video film production; Production of animation; Production of podcasts; Production of videos; Production of live entertainment; Production of video films; Audio and video production, and photography; Production of audio programs; Television production; Film production services; Performance of dance, music and drama; Production of documentaries; Production of video and audio recordings; Production of films; Audio production services; Audio, video and multimedia production, and photography; Production of video cassettes; Performance of music and singing; Production of audio master recordings; Recording studio services for the production of sound bearing discs; Production of video and/or sound recordings; Music mixing services; Music composition services; Radio production services; Television, radio and film production; Production of live performances; Music publishing; Publishing of music; Production of entertainment shows featuring instrumentalists; Music festival

services; Artistic management of music venues; Music performance services; Production of radio programs; Live entertainment production services; Production of television entertainment features; Music concerts; Music concert services; Arranging of music performances; Production of radio programmes; Radio programmes (Production of -); Operation of video and audio equipment for the production of radio and television programs; Presentation of music concerts; Production of live entertainment features; Audio tape production services; Production of live entertainment events; Production of shows; Shows (Production of -); Live music performances.

2. On 20 October 2025, the application was opposed under the fast-track opposition scheme by K Leonidas Internet Ltd ("the opponent"). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act").

3. For the purpose of its opposition, the opponent relies upon the following three trade marks (together "the earlier marks"):

   (i) Trade mark number UK00918172455 ("the 455 mark"):
   Filing date: 28 December 2019
   Registration date: 22 May 2020
   Relying on goods and services listed in Annex 1 of this decision.
   Representation:

   (ii) Trade mark number UK00918156040 ("the 040 mark"):
   Filing date: 21 November 2019
   Registration date: 12 March 2020
   Relying on all goods and services listed in Annex 2 of this decision.
   Representation:

(iii) Trade mark number UK00918183877 (“the 877 mark”)
Filing date: 20 January 2020
Registration date: 22 May 2020
Relying on all goods and services listed in Annex 3 of this decision.
Representation:

4. The opponent claims that the marks are visually highly similar, aurally identical and highly similar, and conceptually identical, and that they cover highly similar goods and services. Consequently, the opponent submits that there is a likelihood of confusion on the public’s part between the marks in issue. The opponent therefore requests that the contested mark be refused registration for all the services applied for.

5. The applicant filed a counterstatement denying that there is a likelihood of confusion between the marks in issue. In summary, the applicant claims that the parties operate in different industries and that the compared marks have different “visual identities” and sounds and meanings. The applicant therefore requests that the opposition be rejected and that the contested mark proceeds to registration.

6. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 No. 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules

2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

"(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

8. The opponent is represented by Trama Legal s.r.o. and the applicant is self-represented. In this case, neither party sought leave to file evidence. No hearing was requested, and neither party filed written submissions in lieu of a hearing. This decision is therefore taken following a careful consideration of the papers that have been filed by the parties, which will not be summarised but will be referred to as and where appropriate during this decision.

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.

DECISION

Section 5(2)(b)

10. The opposition is based upon section 5(2)(b) of the Act which stipulates the following:

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

11. Section 5A of the Act stipulates that 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."

12. Given its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not completed its registration process more than 5 years prior to the date of the application for registration of the contested mark, it is not subject to the use provisions in section 6A of the Act. Consequently, the opponent can rely upon the full breadth of its specification.

13. 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*:[1]

    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;

[1] [2025] UKSC 25

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

14. The opponent opposes the applicant's registration of the contested mark for the services listed in paragraph 1 of this decision and submits that these services are similar to its goods and services listed in annexes 1 to 3 of this decision. Specifically, the opponent submits that the applicant's class 41 services are highly similar to its earlier marks' class 9 and 41 goods and services as they overlap in nature, target audience and "marketing channels". Having said that, whilst the opponent has submitted in general terms that all of the applicant's Class 41 services are highly similar to its services, it has failed to identify which of its own services it considers to be the closest comparator to each of the applicant's services. I do not consider that it would be reasonable or fair for me to undertake a comparison of each potential combination of goods and services which could have been relied upon by the opponent.[2] In the circumstances, I consider that a reasonable approach would be for me to identify what I consider to be the closest term in the opponent's specification, and to carry out a comparison on that basis.[3]

15. The applicant appears to deny that there is similarity between the services in issue. Specifically, the applicant submits that its services "are focused exclusively on music production, live musical performances and related creative audio-visual services", whereas the opponent's services "primarily relate to booking, ticketing, publications and information services within the procurement and business events sector". The applicant therefore submits that these services "differ in purpose, providers, consumer expectation, and market channels", and

[2] See comments of Iain Purvis KC, in his capacity as Appointed Person, in paragraph 28 of *SmartX* - O/0911/24

[3] On this point, I also refer to the case of MontyPay (BL O/0924/24)

that they “are not competitive or linked in a way that would lead the public to assume a common commercial origin”.

16. The applicant further submits that “Any broad administrative overlap under Class 41 does not reflect real-world commercial practice. The Applicant operates in the music and entertainment production field, whereas the Opponent’s Earlier Marks are used in a different industry. The relevant public would understand these to be unrelated sectors.”

17. As a preliminary point, I must undertake a goods and services comparison on the basis of the ‘notional’ coverage of the goods and services in issue in the specifications, not those actually provided. Any differences between the actual goods and services offered by the parties (or any difference in “real-world commercial practice”) will, as a matter of law, have no bearing on the outcome of this opposition, unless those perceived differences are apparent from the specifications. This is because a trade mark registration is essentially a claim to a piece of legal property (the trade mark). Every registered mark is entitled to legal protection against the use, or registration, of the same or similar trade marks for the same or similar goods/services if there is a likelihood of confusion, and the scope of protection afforded to that mark will be identified in its specifications. As outlined above, once a trade mark has been registered for five years, section 6A of the Act is engaged and the opponent can be required to provide evidence of use of its mark within the UK. Until that point, however, the earlier marks are entitled to protection in the UK in respect of the full range of goods and services for which they are registered.

18. It should also be noted that section 60A of the Act provides that goods 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[4], or dissimilar on the ground that they appear in different classes under the Nice Classification.

[4] “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.

19. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,[5] the Court of Justice of the European Union ("CJEU") stated (at paragraph 23) that, when making the comparison, "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".

20. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case[6], for assessing similarity were:

    a. The uses of the respective goods and services;

    b. The users of the respective goods and services;

    c. The physical nature of the goods and services;

    d. The respective trade channels through which the goods and 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 and 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 in the same or different sectors.

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[5] Case C-39/97
[6] [1996] R.P.C. 281

21. As per the case of *Separode,*[7] I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

22. The General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*,[8] 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 für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

Class 41

[…] photography; […] photography.

23. It is noted that the applicant's specification contains the term "Production of video films; Audio and video production, ***and photography***" (my emphasis), and that the specifications for all of the earlier marks include "photography" and "photography services". I consider that the opponent's terms "photography" and "photography services" would both fall within the applicant's above referenced wider term, and that these terms are, therefore, (technically) identical in line with the principle establish in *Meric.*

24. Having said that, I note that the opponent has only pleaded that its goods and services are highly similar to the applicant's services. Noting this and given that I do not consider that anything will turn on this finding, I will proceed on the basis that these services are highly similar.

[7] BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person
[8] Case T- 133/05

Production of music; Music production; Music production services; Production of sound and music recordings; Production of musical videos; Production of musical recordings; Production of audio entertainment; Production of musical works in a recording studio; Audio production; Radio entertainment production; […] music recording services; Production of entertainment in the form of sound recordings; Production of audiovisual recordings; Production of video recordings; Production of audio-visual recordings; Video production; Audio recording and production; Recording of music; Music recording; Production of audio recordings; Production of sound recordings; Production of sound and video recordings; Film production; Music recording studio services; Production of educational sound and video recordings; Audio recording and production services; Video film production; Production of animation; Production of podcasts; Production of videos; Production of video films; Audio and video production […]; Production of audio programs; Television production; Film production services; Production of documentaries; Production of video and audio recordings; Production of films; Audio production services; Audio, video and multimedia production […]; Production of video cassettes; Production of audio master recordings; Recording studio services for the production of sound bearing discs; Production of video and/or sound recordings; Music mixing services; Music composition services; Radio production services; Television, radio and film production; Production of radio programs; Production of television entertainment features; Production of radio programmes; Radio programmes (Production of -); Operation of video and audio equipment for the production of radio and television programs; Audio tape production services;

25. I consider all of the applicant's above referenced services to be types of audio and video production services, which is the end-to-end process of creating audio and visual content, and I compare these terms with the opponent's class 41 term "editing or recording of sounds and images", which is present in the specifications for all of the opponent's earlier marks. I consider these services to overlap in purpose (being to create finished audio or video content) and method of use. I also consider there to be an overlap in users (being artists or businesses) and trade channels (as these compared services will be provided by professionals, such as music and media producers, businesses and content creators). The

editing and recording of sounds and images are also important/indispensable steps within audio and video productions, and I consider that consumers would believe that responsibility for the production services and editing and recording of sounds and images would lie with the same undertaking (namely, the studios or production companies). Consequently, I do consider these services to be complementary.

26. Noting all of the above, I consider these services to be similar to a high degree.

Production of music concerts; Production of music shows; Performance of music; Music performances; Production of live entertainment; Performance of dance, music and drama; Performance of music and singing; Production of live performances; Production of entertainment shows featuring instrumentalists; Music festival services; Music performance services; Live entertainment production services; Music concerts; Music concert services; Arranging of music performances; Presentation of music concerts; Production of live entertainment features; Production of live entertainment events; Production of shows; Shows (Production of -); Live music performances.

27. I note that all of the applicant's above referenced services relate to the arranging of live or recorded musical, dramatic and dance performances to an audience. In the light of my comments in paragraph 14 above, I compare the applicant's above referenced services to the opponent's class 41 term "entertainment booking services", which is present in each of the earlier marks' specifications.

28. The services overlap in general purpose (that being to enable and deliver entertainment performances), user (being professional clients, such as venues, organisers or promoters, the artists/performers themselves and the general public) and trade channels as, for example, agencies may offer the entertainment booking services and the services relating to the arranging of the performance itself.

29. I also consider these services to be complementary. This is because the opponent's bookings services are important to and indispensable for the arranging of music, dance or live entertainment performances, and I consider

that consumers would believe that the same undertaking is responsible for the entertainment booking services and the arranging of the performances themselves. However, without evidence or submissions being provided to the contrary, I can see no basis for finding these services to be competitive. Noting all of the above, I consider these services to be similar to between a medium and high degree.

Artistic management of music venues;

30. I, once again, compare the applicant's above referenced service to the opponent's class 41 term "entertainment booking services".

31. These services overlap in general purpose (being to facilitate the organisation and delivery of entertainment events), users (being professionals in the entertainment industry, such as venue owners, event organiser, promoters or artists themselves) and trade channels (with both services being provided by, for example, agents).

32. I also consider there to be complementarity between these services, as artistic management relies on the booking of entertainers, and entertainment booking services rely on venues and their management to host performances. These services are therefore important to and indispensable from one another, and I also consider that users may believe that responsibility for these services derives from the same undertaking (for example, the agent). I do not, however, consider there to be any basis for finding these services to be competitive.

33. Noting all of the above, I consider these services to be similar to between a medium and high degree.

Consultancy on film and music production

34. I also compare the applicant's above referenced service to the opponent's class 41 term "editing or recording of sounds and images".

35. These services differ in nature and method of use, with the applicant's "consultancy on film and music production" services being advisory in nature (namely, being the provision of expert guidance on the planning, organisation, and creative/technical aspects of production) and the opponent's "editing or recording of sounds and images" services being technical in nature, involving the practical creation and refinement of audiovisual material.

36. Whilst I consider these services to overlap in general purpose (being to assist in the creation of audio-visual material), they differ in specific purpose, with the specific purpose of the applicant's above referenced service being to provide advice and improve the production process, and the specific purpose of the opponent's "editing or recording of sounds and images" being to edit and record audio-visual material. Consequently, you would not utilise one service in the place of the other. They are not therefore competitive.

37. Further, whilst I consider that the applicant's above referenced service would assist with and improve the provision of the opponent's compared service, I do not consider these services to be important or indispensable from one another. Having said that, I do consider there to be an overlap in users (being artists/ professionals), and trade channels as, for example, the studio and production companies providing the "editing and recordings or sounds and images" services may also provide consultancy services on the film and music production.

38. Noting all of the above, I consider these services to be similar to a low degree.

<u>Music publishing […]; Music publishing; Publishing of music;</u>

39. I compare the applicant's above referenced services to the opponent's class 41 term "*Publication of newspapers, periodicals, catalogs and brochures*", which is present in each of the earlier marks' specifications.

40. As a preliminary point, I consider that the applicant's music publishing services would include the publishing of sheet music, and I consider these services to overlap in nature, given that they are all at their core publishing services, which

involves the organisation and dissemination of content to the public, albeit the subject matter of that content differs. The purpose of these services also overlaps at a general level, being the provision of content and audience engagement, but the specific purpose differs, with the specific purpose of music publishing being to make musical works available and to commercially exploit that music works, and the specific purpose of the opponent's compared service being to make newspapers, periodicals, catalogs and brochures available.

41. I consider there to be an overlap in method of use and users, with both services being delivered in hard copy and digitally to members of the general public. However, without evidence being provided to the contrary, I do not consider these services to overlap in trade channels. These services are also not competitive and, without evidence to suggest otherwise, I do not consider these services to be complementary.

42. Noting all of the above, I consider these services to be similar to a low degree.

Average consumer and the purchasing act

43. 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 and services in question (see *Lloyd Schuhfabrik Meyer*[9]).

44. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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;

[9] Case C-342/97

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.

45. The services for which I have found similarity are broad in nature, but they all relate to the provision of entertainment or publishing services (be that through the production of audio or visual content, or the facilitation of artistic performances). Consequently, I consider there to be a number of average consumers, namely professionals in the entertainment industry, business consumers and members of the general public (who will utilise, for example, the entertainment booking services, music concert services or music performance services).

46. For all types of identified average consumer, the selection of the services will be primarily visual, though I do not discount an aural component playing a role by way of word-of-mouth recommendations.

47. The frequency and cost of the services at issue will vary quite significantly. I say this because some of the broad "performance of music" and "entertainment booking services" terms will cover services relating to smaller scale events (which will be lower in price) and larger scale performances (which will be significantly more expensive). Even in respect of the various types of "production" or the "publishing" services in issue, the costs of these services will vary significantly, and the frequency to which these services are utilised will also vary considerably as a result.

48. In terms of the level of attention paid, I consider that this too will vary. For members of the general public, they will pay attention to factors such as the nature of the entertainment being provided, the performers involved, reviews, and the venue at which the entertainment is being provided. In my view, the selection of such services is likely to attract a medium degree of attention.

49. As for the professionals and business user, when seeking the services in issue, these consumers will pay attention to a number of factors including, the reputation or prior accomplishments of the undertaking providing the service, the costs of the service, the suitability of the service and any contractual considerations. However, the selection process is likely to be an important factor to their livelihood/in the running of their business and to have significant financial implications to these consumers, so the selection process is likely to be more involved. Taking all of this into account, I am of the view that the level of attention paid by some professionals and business users will be high. All of this being said, I do appreciate that it is likely that for some smaller scale services selected by the professional and business user, the selection process will likely be medium.

50. In summary, I consider that the level of attention paid by all of the identified average consumers will vary from between a medium to high degree depending on the scale or costs of the relevant service.

Comparison of marks

51. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23)[10] 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*,[11] 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."

52. 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.

53. The respective trade marks are shown below:

Contested Mark	Earlier Marks
INDUSTRY	industry ("the 455 mark")

[10] C-251/95
[11] Case C-591/12P

	(“the 040 mark”)
	(“the 877 mark”)

54. The opponent submits that the marks in issue are visually highly similar, aurally highly similar or identical, and conceptually identical. This is because the opponent submits that all of the marks contain “the identical and distinctive element “INDUSTRY””, and the additional “.com” in the 040 mark and the 877 mark “merely accompany the main element as a technical and generic component with no distinctive character due to its nature as a top-level domain”, and the figurative elements of all of the marks “do not materially affect their overall commercial impression”.

55. The applicant submits that all of the marks differ visually as the contested mark “incorporates a distinctive design motif and stylised letters, which significantly affects its overall impression, and the earlier marks “consist of plain word marks or a generic “.com” suffix”. The applicant also submits that the 040 mark and the 877 mark include the “additional spoken element (“dot com”), signalling an online platform and creating a different sound and meaning”.

Overall Impression

56. The contested mark is a figurative mark made up of the word “INDUSTRY” in a white capitalised typeface, with each individual letter positioned inside a black box. Either side of the word “INDUSTRY” are two devices that appear reminiscent of a black pinwheel. Whilst I consider that consumers’ eyes are

usually drawn to the elements of a mark that they are able to read, I note that the presentation/stylisation of the contested mark (namely, the typeface and device elements of the contested mark) is considerable, and I consider the word "INDUSTRY" to be low in distinctiveness (given that it is a standard dictionary word referring to a particular business sector, or the people/businesses that are involved in providing a product/service). Noting all of the above, I consider that the presentation/stylisation and the word "INDUSTRY" contribute equally to the contested marks' overall impression.

57. The earlier marks are also all figurative marks consisting of the word "industry" in a fairly standard lower case, but bold, typeface.

58. The first 7 letters of the word "industry" in the 455 mark (namely, "industr") are blue, and the final "y" in the word "industry" is red. The "y" has also been extended so that it underlines the word "industry". Immediately next to the "y" is a small blue circular device, with three semi-circles underneath that give the circular device a 3D presentation. For the reason outlined above, I consider the word "INDUSTRY" to be low in distinctiveness. Consequently, I find that the combination of the word "INDUSTRY" and the marks visual presentation play an equal role in the overall impression of the 455 mark.

59. Save for the fact that the 040 mark is made up of just one colour, blue, the word "industry" is presented identically in the 040 mark as it is in the 455 mark. However, immediately next to the "y" in the 040 mark is a blue circular device with the letter "com". Given its circular shape, I consider that the average consumer will read this device as a stylisation of the internet suffix, ".com". Whilst I appreciate that the "industry" element of the 040 mark is less stylised than the 455 mark given that it is presented in just one block colour, for the same reasons outlined above, I consider the word "industry" to be low in distinctiveness. I also, therefore, consider that the overall visual presentation of the 040 mark (i.e. the colouring, typeface and device element) plays an equal role in the overall impression of that mark to the word "industry" itself.

60. Save for the fact that the “y” in the 877 mark is presented in red, and the remainder of the mark is presented in blue, the 877 mark is presented identically to the 040 mark. Accordingly, for the same reasons outlined in the paragraph above, I consider that the stylisation/presentation (including the colouring, typeface and device element) of the 877 mark plays an equal role to the word “industry” itself in the overall impression of the mark.

Comparison with the contested marks:

THE 455 MARK:

61. Visually, the opponent’s above referenced mark and the contested mark overlap in their use of the word “INDUSTRY”. However, these marks differ in their colouring and stylisation of the word “INDUSTRY”, and in their use of devices (with the contested mark utilising two black pinwheel devices either side of the word “INDUSTRY”, and the 455 mark utilising a 3D circular device). Weighing up all of the above and noting my finding that the stylisation and word “INDUSTRY” play an equal role in the overall impression of these marks, I consider the marks to be visually similar to a medium degree.

62. I consider that the only element of these marks that will be pronounced is the word “INDUSTRY”, which is a dictionary word and will be pronounced in the ordinary way in respect of both marks. Consequently, these marks are aurally identical.

63. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.[12] The assessment must, therefore, be made from the point of view of the average consumer.

64. As outlined above, both marks contain the word “INDUSTRY”, which is a standard English dictionary word referring to a particular business sector, or the

[12] [2006] ECR I-643; [2006] E.T.M.R

people/businesses that are involved in providing a product/service. I consider this to be the conceptual meaning that the average consumer would attribute to both of these compared marks. I do not consider that the stylisation elements of either of the marks in issue provides any additional conceptual meaning. Consequently, I consider these marks to be conceptually identical.

THE 040 MARK

65. Visually, once again, the opponent's above referenced mark and the contested mark overlap in their use of the word "INDUSTRY". However, these marks differ in their colouring and stylisation of the word "INDUSTRY", and in their use of devices (with the contested mark utilising two black pinwheel devices either side of the word "INDUSTRY", and the 040 mark utilising a circular device containing the letters "COM"). Weighing up all of the above and noting my finding that the stylisation and word "INDUSTRY" play an equal role in the overall impression of these marks, I consider the marks to be visually similar to a medium degree.

66. I consider that the only element of the contested mark that will be pronounced is the word "INDUSTRY". The 040 mark also contains the word "INDUSTRY", which I consider will be pronounced in the ordinary way in respect of both marks. However, the 040 mark also contains the circular device element containing the letters "COM". Given the fact that the circular device is reminiscent of a "dot", I consider that the average consumers may perceive and pronounce this as the internet suffix "dot com".

67. Weighing up all of the above, whilst also noting that the beginning of marks tend to have more visual and aural impact,[13] I consider the marks to be aurally similar to a medium to high degree.

68. The concept of the contested mark will be as outlined in paragraph 64 above. The above referenced 040 mark also contains the word "INDUSTRY", which will be given the same conceptual meaning. However, the 040 mark also has the

[13] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

device element which, for the reasons identified in paragraph 66 above, I consider will be read by the average consumer as the internet suffix ".com".

69. In comparing the marks at issue, I find that the shared concept of the word "Industry" will be considerable. However, the addition of the device/".com" element is a point of conceptual difference (albeit not a particularly distinct one as a standalone component), as it has no counterpart in the earlier mark. Overall, I consider that the marks are conceptually similar to a medium degree.

<u>THE 877 MARK</u>

70. Save for the fact that the "y" in the 877 mark is presented in red rather than blue, the 877 mark is presented identically to the 040 mark. I do not consider that this change in colour will have any impact on my visual, aural or conceptual comparison finding and, accordingly, for the same reasons identified in paragraphs 65 to 69 above, I find the 877 mark to be visually and conceptually similar to a medium degree, and aurally similar to between a medium and high degree to the contested mark.

Distinctive character of the earlier trade mark

71. 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 C108/97 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)."

72. Distinctiveness is a scale along which marks of various types sit. A mark which is allusive of the services will have less distinctive character than one that is not; dictionary words will also be less distinctive than words which are entirely fanciful. However, all will turn on the particular facts. For example, there are "invented" words which are really just composites of two allusive words and only distinctive as a result, and dictionary words which are more or less common than others.

73. Whilst the distinctiveness of a mark may be enhanced as a result of it having been used in the market, in this instance the opponent has filed no evidence of use. Consequently, I have only the inherent position to consider.

74. It is noted that, beyond identifying the word "INDUSTRY" as the "distinctive" element of all of the earlier marks, the opponent has failed to provide any submission relating to the distinctiveness, or lack thereof, of the earlier marks.

75. The three earlier marks are all figurative marks consisting of the word "industry", which is stylised and presented with an accompanying device. As discussed above, "industry" is a standard dictionary word referring to a particular business sector, or the people/businesses that are involved in providing a product/service, and I consider this word to be low in distinctiveness. I do not consider that the stylisation of the earlier marks significantly increases the inherent distinctive character of the earlier mark given that the typeface utilised in all of the earlier marks is a standard one, and the device elements are quite banal. However, overall, I consider the inherent distinctive character of the earlier mark to be between a low and medium degree.

Likelihood Of Confusion

76. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, whilst 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.

77. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind.[14] The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa (see *Canon*[15]). It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

78. I have found the parties' services to be similar to between a low and high degree. I have also found all of the marks in issue to be visually similar to a medium degree, and that the contested mark and the 040 mark and 877 mark are conceptually similar to a medium degree, and aurally similar to between a medium and high degree. In addition, I have found that the contested mark and the 455 mark are aurally and conceptually identical. I have also found that all of the earlier marks have between a low and medium level of inherent distinctive character.

79. I have identified that, given their broad nature, there will be a number of average consumers of the services for which I have found similarity (namely, professionals, business users and members of the general public), and that all

[14] *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25
[15] C-39/97, para 17

of these identified average consumers will pay between a medium and high degree of attention during the purchasing process, depending on the scale and cost of the relevant service. I have also found that the purchasing process for all of the services for which I have found similarity will be primarily visual in nature, although I do not discount aural considerations.

80. Weighing up all of the above and notwithstanding the principle of imperfect recollection, I consider that there are sufficient visual differences between the marks to avoid them being mistakenly recalled as each other, particularly given that I have determined that at least a medium level of attention will be paid by the average consumer during the purchasing process. I make this decision with due consideration of my finding that some of the services in issue are highly similar, and the interdependency principle, as I believe the visual differences between the marks in issue outweigh the level of similarity between the services.

81. Whilst I appreciate that I have found the contested mark and the earlier 455 mark to be aurally and conceptually identical, I note that visual, aural and conceptual similarity do not always carry the same weight. For instance, where services are purchased by primarily visual means, greater weight will be attributed to the visual similarities or differences.[16] In this case, given that the purchasing act is likely to be predominantly visual in nature, the visual differences between the competing marks are of particular importance as consumers are unlikely to select the services without sight of the marks.

82. My finding is also bolstered by the fact that I have found the word "Industry" to be low in distinctiveness, and that the earlier marks have between a low and medium level of inherent distinctive character overall (as a result of the stylisation/presentation of the marks). This is important because it is the distinctiveness of the common element which is key: In *Kurt Geiger v A-List Corporate Limited*,[17] Mr Iain Purvis KC as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of

[16] New Look v OHIM T-117/03 to T-119/03 and T-171/03
[17] BL O/075/13

confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

> "39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

83. Bearing this in mind, I note that the stylisation of the respective marks is strikingly different and I do not consider that this will be misremembered by the average consumer.

84. Accordingly, I will go on now to consider whether the average consumer, having recognised that the marks are different, considers the common element of the marks in issue (the word "Industry") and determines, through a mental process, that the marks are related and originate from the same, or an economically linked undertaking.

85. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:[18]

"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 recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but

[18] BL O/375/10

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)."

86. I have borne in mind that these examples are not exhaustive. Rather, they were intended to be illustrative of the general approach. I also recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element, and it is not sufficient that a mark merely calls to mind another mark, this is mere association, not indirect confusion.[19]

87. I am also conscious that the point of similarity between the marks is the word 'Industry", which alone, for the reasons outlined above, I have found to be low in distinctive character. In *Face2FaceHR Partners Limited v Peninsula Business*

[19] Duebros Limited v Heirler Cenovis GmbH, BL O/547/17

Services Limited,[20] Emma Himsworth K.C., sitting as the Appointed Person, reviewed the case law in *Whyte and Mackay v Origin* [2015] EWHC 1271 (Ch) and *Nicoventures Holdings Limited v The London Vape Co Ltd* [2017] EHWC 3303 (Ch), as well as guidance in the Common Communication on the Common Practice of Relative Grounds of Refusal - Likelihood of Confusion (impact of non-distinctive/weak components) dated 2 October 2014, which is referred to in the case law. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows, at paragraph 44:

> "(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.
>
> (2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.
>
> (3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.
>
> (4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.
>
> (5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.
>
> (6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical."

88. Noting the above, I also do not consider there to be a likelihood of indirect confusion between any of the earlier marks and the contested mark. In my view, as discussed above, the earlier marks and the contested mark are stylised/presented strikingly differently, and I do not believe that consumers

[20] O/0368/23

would assume that the parties are economically linked undertakings simply on the basis of their mutual use of the word “Industry”, rather I consider that consumers would perceive the common use of the word “Industry” as purely co-incidental. I also do not consider that consumers would perceive the differences between the contested mark and all of the earlier marks to be conducive of a logical sub-brand or brand extension. I can see no reason why the average consumer, having recognised the significant differences in the stylisation of the marks, would assume that the opponent had redesigned its mark with a completely different look and feel, resulting in the contested mark. In light of the above, I find that there is also no likelihood of indirect confusion between the competing marks, even in relation to services that I have found to be highly similar.

89. Further, in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,[21] Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*,[22] where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

Final Remarks:

90. For the avoidance of doubt, even if I had pursued my consideration of this case on the basis of my initial finding that the “photograph” services were identical rather than highly similar, I would still not have found a likelihood of confusion on the part of the average consumer. This is because, I would still have found that the visual differences between the marks outweigh any potential identity between the services. I can see no basis for finding that these striking presentational differences between the marks would be mis-remembered, or that the contested mark would be perceived as a brand extension or sub-brand of the earlier mark.

[21] [2021] EWCA Civ 1207
[22] O/219/16

Even with identical services, I remain of the view that the average consumer would perceive the shared use of the weakly distinctive element “Industry” as merely co-incidental, and not an indication that the services derive from the same or an economically linked undertaking.

CONCLUSION

91. The opposition fails in its entirety and, subject to any successful appeal of my decision, the application may proceed to registration for all services.

COSTS

92. The applicant has been successful and is entitled to a contribution towards its costs. However, as the applicant is not legally represented, in its letter to the applicant of 2 December 2025, the Tribunal said:

“If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party. Please send these by e-mail to tribunalhearings@ipo.gov.uk on or before 2 January 2026.

If the proforma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. You must include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs. Please note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour.”

93. No cost pro forma has been received to date. Since the applicant did not file a cost pro forma by the deadline given in the Tribunal’s letter of 2 December 2025, and has paid no statutory fees in these proceedings, I will make no costs order against the opponent in this matter.

Dated this 29th day of May 2026

B Hartland

For the Registrar

Annex 1

Specification relied upon for the 455 mark:

Class 9: Electronic magazines; Recorded content; Directories [electric or electronic]; Data recorded electronically; Data recorded electronically from the internet; Software; Data carriers containing stored typographic typefaces; Timetables (Electronic -).

Class 41: Entertainment booking services; Arranging for ticket reservations for shows and other entertainment events; Arranging of an annual conference relating to procurement; Book rental; Booking agencies for concert tickets; Booking agencies for theatre tickets; Booking agency service for cinema tickets; Booking agency services for cinema tickets; Booking agency services for theatre tickets; Booking of entertainment; Booking of seats for concerts; Booking of seats for entertainment events; Booking of seats for shows and booking of theatre tickets; Booking of seats for shows and sports events; Business educational services; Business training; Concert booking; Concert booking services; Editing or recording of sounds and images; Education; Education services relating to photography; Educational services relating to sales training; Employment training; entertainment; Hosting [organising] awards; Instruction services relating to the sale of office furniture; Legal education services; Multimedia publishing of magazines, journals and newspapers; Organisation and holding of fairs for cultural or educational purposes; Photography; Photography services; Providing entertainment information; Providing of training; Providing on-line information and news in the field of employment training; Providing on-line non-downloadable pictures; Provision of facilities for employment skills training; Provision of training courses for young people in preparation for employment; Publication of electronic newspapers accessible via a global computer network; Publication of newspapers; Publication of newspapers, periodicals, catalogs and brochures; Publication of online guide books, travel maps, city directories and listings for use by travellers, not downloadable; Publication of printed directories; Publishing of newspapers; Rental of books; Rental of magazines; Rental of newspapers and magazines; Ticketing and event booking services.

Annex 2

Specification relied upon for the 040 mark:

Class 41: Entertainment booking services; Arranging for ticket reservations for shows and other entertainment events; Arranging of an annual conference relating to procurement; Book rental; Booking agencies for concert tickets; Booking agencies for theatre tickets; Booking agency service for cinema tickets; Booking agency services for cinema tickets; Booking agency services for theatre tickets; Booking of entertainment; Booking of seats for concerts; Booking of seats for entertainment events; Booking of seats for shows and booking of theatre tickets; Booking of seats for shows and sports events; Business educational services; Business training; Concert booking; Concert booking services; Editing or recording of sounds and images; Education; Education services relating to photography; Educational services relating to sales training; Employment training; entertainment; Hosting [organising] awards; Instruction services relating to the sale of office furniture; Legal education services; Multimedia publishing of magazines, journals and newspapers; Organisation and holding of fairs for cultural or educational purposes; Photography; Photography services; Providing entertainment information; Providing of training; Providing on-line information and news in the field of employment training; Providing on-line non-downloadable pictures; Provision of facilities for employment skills training; Provision of training courses for young people in preparation for employment; Publication of electronic newspapers accessible via a global computer network; Publication of newspapers; Publication of newspapers, periodicals, catalogs and brochures; Publication of online guide books, travel maps, city directories and listings for use by travellers, not downloadable; Publication of printed directories; Publishing of newspapers; Rental of books; Rental of magazines; Rental of newspapers and magazines; Ticketing and event booking services.

Annex 3

Specification relied upon for the 877 mark:

Class 9: Electronic magazines; Recorded content; Directories [electric or electronic]; Data recorded electronically; Data recorded electronically from the internet; Software; Data carriers containing stored typographic typefaces; Timetables (Electronic -). Class 41: Entertainment booking services; Arranging for ticket reservations for shows and other entertainment events; Arranging of an annual conference relating to procurement; Book rental; Booking agencies for concert tickets; Booking agencies for theatre tickets; Booking agency service for cinema tickets; Booking agency services for cinema tickets; Booking agency services for theatre tickets; Booking of entertainment; Booking of seats for concerts; Booking of seats for entertainment events; Booking of seats for shows and booking of theatre tickets; Booking of seats for shows and sports events; Business educational services; Business training; Concert booking; Concert booking services; Editing or recording of sounds and images; Education; Education services relating to photography; Educational services relating to sales training; Employment training; entertainment; Hosting [organising] awards; Instruction services relating to the sale of office furniture; Legal education services; Multimedia publishing of magazines, journals and newspapers; Organisation and holding of fairs for cultural or educational purposes; Photography; Photography services; Providing entertainment information; Providing of training; Providing on-line information and news in the field of employment training; Providing on-line non-downloadable pictures; Provision of facilities for employment skills training; Provision of training courses for young people in preparation for employment; Publication of electronic newspapers accessible via a global computer network; Publication of newspapers; Publication of newspapers, periodicals, catalogs and brochures; Publication of online guide books, travel maps, city directories and listings for use by travellers, not downloadable; Publication of printed directories; Publishing of newspapers; Rental of books; Rental of magazines; Rental of newspapers and magazines; Ticketing and event booking services.