

BL O/0526/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION No. 4100173

BY TIKTOK LTD.

TO REGISTER THE FOLLOWING TRADE MARK:

Sola Luna beauty

IN CLASSES 3 AND 35

-AND-

THE OPPOSITION THERETO UNDER No. 451485

BY STEPHENSONS ONLINE LTD

Background and pleadings

1. On 16 September 2024, Lemon Inc. applied to register the trade mark shown on the cover page of this decision in the UK. It was accepted and published in the Trade Marks Journal on 27 September 2024. Registration is sought for a variety of goods and services in Classes 3 and 35 – these are set out in full at Annex 1 of this decision.

2. On 19 December 2024, Stephenson’s Online LTD (“**the Opponent**”) opposed the application under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ The opposition is directed against all of the goods and services applied for and is based on the Opponent’s three earlier registrations set out below. The Opponent relies on all of the goods and services for which those marks are registered. The full specifications are set out at Annexes 2 and 3 to this decision.

“the Figurative Mark”

Representation of the mark:	
Type of mark:	figurative
Registration Number:	3561413
Filing date:	27 November 2020
Registration date:	23 April 2021
Classes:	3, 35, 39

“the Word Mark”

Representation of the mark:	SOL BEAUTY
Type of mark:	word
Registration Number:	3561406
Filing date:	27 November 2020
Registration date:	23 April 2021
Classes:	3, 35, 39

¹ 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.

“the Series Mark”

Series of 2 marks

Representation of the marks:

1 of 2

2 of 2



Type of mark: figurative

Registration Number: 4046908

Filing date: 2 May 2024

Registration date: 26 July 2024

Classes: 3

3. By virtue of their filing dates, the registrations upon which the Opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As they had not been registered for more than five years at the filing date of the contested application, they are not subject to the use conditions pursuant to section 6A of the Act, and accordingly, the Opponent may rely on all the goods and services for which its trade marks are registered without having to show any use at all.

4. The Opponent claims that the competing marks are similar and that the respective goods and services are similar, giving rise to a likelihood of confusion.

5. Lemon Inc. filed a defence and counterstatement denying the claims made.

6. After the defence was filed, the contested trade mark application was assigned by Lemon Inc. to Tik Tok Ltd., who is the present proprietor. Tik Tok Ltd. also undertook to stand by the statements made in the defence and counterstatement, confirming that where the name of the original applicant appears, it should be read as Tik Tok Ltd.; it also undertook to be liable for costs in these proceedings in the event that the Opponent is successful. Accordingly, I will hereinafter refer to Tik Tok Ltd. as “the

Applicant” and the assignment of the contested trade mark application has no further relevance in these proceedings.

7. Neither party filed evidence nor submissions during the evidence rounds. A hearing was not requested, and only the Opponent elected to file submissions in lieu of a hearing. I therefore make this decision following careful consideration of the papers before me.

8. The Opponent is represented by Adamson Jones and the Applicant is represented by D Young & Co LLP.

Legislation and Case Law

9. Section 5(2)(b) of the Act states:

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

(a) [...]

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

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

10. I am guided by the principles applicable to the assessment of the likelihood of confusion, as cited with approval by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25. These principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (“OHIM”)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also 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 great 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 and services

11. The Applicant's specification, set out in full at Annex 1 of this decision broadly cover a variety of beauty products, including cosmetics, toiletry preparations, and perfumery in Class 3; the Class 35 specification broadly covers a variety of advertising, marketing and promotional services, business management services and retail services in connection with the sale of a variety of the aforementioned Class 3 beauty products.

12. All three earlier marks are registered in Class 3, and the Word Mark and Figurative Mark are also registered in Classes 35 and 39. The earlier Class 3 specifications are the same as each other,² and broadly cover a variety of beauty products, including cosmetics, toiletry preparations and perfumery. The Class 35 specifications likewise broadly cover retail services connected with such Class 3 beauty products, together with promotional and business management services. The Class 39 services relate to the packaging and distribution of *"retail goods"*.

13. The following terms appear identically in the competing Class 3 specifications:

"soaps; hair colourants; essential oils, aromatherapy preparations; cosmetics; nail polish"

14. As regards the competing Class 35 specifications, the Opponent's *"retail services relating to cosmetics, [...] perfumery [...]"* is self-evidently identical to the Applicant's *"retail services in connection with the sale of [...] perfumery [...] cosmetics [...]"*.

15. Consequently, for reasons which will become apparent, I will conduct my assessment on the basis that at least some of the competing goods and services are identical.

² See Annexes 2 and 3.

The average consumer and the nature of the purchasing process

16. Trade mark questions, including the likelihood of confusion, must be viewed through the eyes of the average consumer of the goods and services in question. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, at [15]-[20], where he pointed out the following in relation to the average consumer:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by 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.

17. In the context of the identified identical goods and retail services, the average consumer will be a member of the general public.

18. Although the goods will vary in price, they are, for the most part, likely to be relatively inexpensive and purchased on a regular basis. They will typically be selected visually in retail outlets, catalogues and online. While I do not discount the possibility of oral selection by requests to staff, consumers are still likely to have viewed the goods before purchase. The selection process will therefore be predominantly visual.

19. The purchasing process for the goods is likely to be more casual than careful and will not involve an overly considered thought process. Overall, the average consumer will not typically demonstrate more than a medium level of attention when selecting the goods.

20. The services are likewise to be selected primarily by visual means, although I do not discount aural considerations through word of mouth recommendations. Given the nature of the goods to which the services relate, the average consumer is likely to pay no more than a medium degree of attention when selecting the retail services.

Comparison of marks

21. I have already set out the principles gleaned from established case law with regard to comparing competing marks. I also note that the Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM*,³ 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.”

22. 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

³ Case C-591/12P, at paragraph 34.

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

23. I will base my comparison on the Opponent's Word Mark, as its registration as a word mark represents the Opponent's best case. The marks to be compared are shown below.

Opponent's mark	Applicant's mark
SOL BEAUTY	Sola Luna beauty

Overall impression

24. As word-only marks, the overall impression of each mark lies in the words themselves.

25. The word 'beauty' in both marks is descriptive of, or at least allusive to, the goods and, more broadly, to a business operating in the beauty industry. It therefore carries limited relative weight in the overall impression of the marks.

26. Accordingly, the overall impression of the Opponent's mark is dominated by the word 'SOL' and the overall impression of the Applicant's mark is dominated by the words 'Sola Luna'.

Visual comparison

27. The fact that one mark is presented entirely in capitals and the other in title case does not constitute a point of visual distinction, since both may notionally be presented in upper case, lower case, or a combination of the two because word marks are "*not limited by any features such as fonts or capitalisation appearing on the Register*".⁴

⁴ *HERNO S.p.A. v Miss Sparrow Ltd*, BL O/954/22, at [15].

28. Clearly both marks share the identical last word 'beauty', however since this word is descriptive in the context of the goods and services at issue which relate to beauty products, it has little or no weight in the overall impression.

29. As regards the comparison between the dominant competing elements, 'SOL' and 'Sola Luna', the first three letters of 'Sola' in the application are identical to the word 'SOL' which constitutes the only distinctive element of the opponent's mark. The word Luna has no counterpart in the Opponent's mark.

30. Overall the marks are visually similar to a low to medium degree.

Aural comparison

31. The Opponent's mark consists of the one-syllable word 'SOL' and the two-syllable word 'BEAUTY' (beau-ty).

32. I consider that a significant proportion of the average consumer is likely to pronounce the single syllable word 'SOL' in the same way as the syllable 'sol' is pronounced in the ordinary English word 'parasol' (para-sol), and that a likewise significant proportion are likely to pronounce it as the ordinary English word 'sole'.

33. The Applicant's mark consists of three words, each of which has two syllables (Sol-a; Lun-a; beau-ty).

34. A significant proportion of the average consumer is likely to pronounce 'Sola' and 'Luna' as the ordinary English words 'solar' and 'lunar' respectively.

35. Whilst there is potential for a crossover in pronunciation of the three letter sequence 'SOL', there is nonetheless an aural difference created by the second syllable in the word 'Sola'.

36. The marks therefore share the identical pronunciation of the last word 'beauty' and some aural similarity arising from the initial 'sol/sola' sound, but the additional two syllable word 'Luna' in the Applicant's mark creates a clear point of aural difference. Overall, I consider the marks to be aurally similar to between a low and medium degree.

Conceptual comparison

37. The Opponent makes the following submissions about its Word Mark:⁵

“Conceptually, the word 'SOL' has no known meaning in the English language. The closest word to 'SOL' is 'Solar' meaning "of or from the sun" for example, solar flare, solar eclipse, or solar heating. The word 'SOL' will likely be attributed to a shortening of the word 'Solar'. The mark of the Opponent's Earlier Registration will therefore be considered to mean SOL (Sun) BEAUTY. The mark of the Contested Application, 'Solar Luna beauty', can only be considered to have an identical conceptual meaning to that of the meaning of 'Solar' i.e. "of or from the sun" for example, solar flare, solar eclipse, or solar heating. The word 'Luna' is not a word in the English Language. The closest English word to 'Luna' is 'Lunar', which, according to the Cambridge English Dictionary means "of or relating to the moon". When the moon is visible in the sky, this is because the Sun's light is reflecting off the Moon's surface. Therefore, although the word 'Luna' is likely to be interpreted as referring to the Moon, this will still give the consumer connotations of the Sun and of the topic of astronomy. Therefore, the conceptual meanings of the mark of the Opponent's Earlier Registration and the mark of the Contested Application, 'Solar Luna beauty', will be considered to have similar conceptual meanings that must be related astronomical matters featuring the Sun. The marks are conceptually similar to a medium degree.”

38. The Applicant makes the following submissions in its counterstatement:

“3.6 The Applicant denies the claims made in paragraph 8 SOG. It is denied that the word SOL has no known meaning in the English language. The word SOL would be readily understood by consumers as referring to the word “soleil” which is understood by consumers to refer to the sun. It is denied that SOLA is the closest word to SOL in the English language – the word SOLA is not a typical English word. It is also denied that the word SOL of the Earlier Registration will be attributed to a shortening of the word SOLA as depicted in the Application. The words are distinct in meaning.

⁵ These submissions appear identically in the statement of grounds, paragraph 8, and the Opponent's submissions in lieu, at paragraph 14.

3.7 It is accepted that LUNA may be reminiscent of the word LUNAR relating to the moon but it is denied that even if the Application was understood as such that this would give the consumer connotations of the sun and the topic of astronomy as claimed – that is a much broader spectrum than the Application evokes. In any event, the Application does not comprise the word LUNAR but LUNA which, as accepted by the Opponent, has no meaning in the English language. Given the Application contains 2 words not within the English language and therefore the Application has no conceptual meaning, whereas by contrast, the Earlier Registration will be immediately understood, it is denied that the conceptual meanings of the trade marks are similar to a medium degree or at all. If the Application is indicative of anything, it will be the moon – and not the sun. Whilst both are a part of the solar system, they are understood by consumers as referring to very different things.”

39. The Opponent’s position is that, whilst SOL has no meaning in English, it may nevertheless be perceived as being derived from the ordinary English word ‘solar’. The Applicant disputes this, asserting that SOL *does* have a meaning in English because it would be readily understood by consumers as referring to ‘soleil’, meaning the sun. However, I am not aware of ‘soleil’ being defined in English as meaning ‘sun’; the only entry I am able to identify for ‘soleil’ in the Oxford English Dictionary refers to a kind of woollen fabric. In those circumstances, and in the absence of supporting evidence, I am not persuaded that a significant proportion of the average consumer would understand SOL as deriving from ‘soleil’, in the sense advanced by the Applicant, in preference to perceiving it as being coined from the ordinary, dictionary-defined English word ‘solar’.

40. That said, I do not consider any conceptual link between SOL and the ordinary word ‘solar’ to be especially immediate either.⁶ SOL is a short three-letter sequence and may simply be perceived as an abbreviation or letter combination with no particular meaning. I am also mindful that a great number of English words begin with those letters. The connection with ‘solar’, and through it the derived concept of the sun, is likely to be stronger for goods which are specifically sun-related, such as the

⁶ 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 General Court and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R. I-643; [2006] E.T.M.R. 29.

Opponent's "*sun-tanning and sun protection preparations*" and "*self-tanning skin preparations*". However, the specification is not confined to such goods. For the remaining goods, many of which are general beauty, cosmetic, toiletry or perfumery products, I do not consider the allusion to 'solar', or to the sun, to be especially immediate or strong.

41. By contrast, the conceptual position is somewhat different in relation to SOLA LUNA. Given the one-letter difference between SOLA and 'solar', I consider it likely that a proportion of the average consumer may perceive SOLA as a misspelling of, or as otherwise derived from, 'solar'. That impression is reinforced by the presence of LUNA, which is likely to call 'lunar' to mind for a significant proportion of consumers. The concepts of the sun and moon sit naturally together and would be readily recognised by the average consumer, regardless of whether the goods are specifically sun-related (in the context of the Applicant's cosmetics and skincare products, I also do not discount the possibility that SOLA LUNA may even be understood as alluding more broadly to day and night use, or to day and night skincare routines). Accordingly, any solar/lunar concept is more readily apparent in the Applicant's mark than any sun-related concept is in SOL alone in the Opponent's mark.

42. Taking those matters together, I find that any conceptual overlap between the marks is limited. The possible allusion to the sun in SOL is weak and not especially immediate, whereas any solar/lunar concept is more readily apparent in the Applicant's mark. Accordingly, the marks are conceptually similar to no more than a low degree.

Distinctive character of the earlier trade mark

43. The degree of distinctiveness of the earlier mark is one of the factors that must be taken into account when assessing whether there is a likelihood of confusion. This is because the more distinctive the earlier mark, the greater the likelihood of confusion may be.⁷

44. Registered trade marks possess varying degrees of inherent distinctive character, ranging from low, because they are suggestive or allusive of a characteristic of the

⁷ *Sabel v Puma*.

goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

45. The Opponent makes no claim to enhanced distinctiveness through the use made of the earlier word mark and has filed no evidence of use. I therefore have only the inherent distinctiveness of the mark to consider. The word BEAUTY is descriptive of the relevant beauty, cosmetic, toiletry and perfumery goods and related retail services (and is at best, highly allusive of the remainder of the services for which the mark is registered insofar as it alludes to a service provider operating in / specialising in the beauty industry), it therefore makes no material contribution to the mark's distinctive character. The distinctive character of SOL BEAUTY therefore resides in SOL.

46. Firstly, SOL is a short three-letter sequence, which may simply be perceived as an abbreviation or acronym with no particular, obvious meaning. In this regard I note that *“combinations of two or three letters are inherently weak, given the limited number of letters in the alphabet, the great number of meanings that acronyms and abbreviations may have and the fact that consumers frequently encounter abbreviations and letter combinations of all kinds in everyday life and business as generic abbreviations but not as marks.”*⁸ That applies here: SOL may simply be perceived as an abbreviation or letter combination with no particular meaning.

47. Secondly, to the extent that SOL is perceived as being coined from, or alluding to, the ordinary English word 'solar', the allusion to the sun is plainly suggestive for goods which are specifically sun-related, such as sun-tanning and sun protection preparations or self-tanning skin preparations. Whilst the allusion to 'solar' or the sun is less immediate for the goods and services on which I base my assessment, the mark does not rise above a low degree of inherent distinctive character, because SOL remains a short three-letter sequence and, even if it is perceived as alluding to 'solar', that possible meaning does not materially elevate its inherent distinctiveness, to beyond a low degree, even in the context of goods which are not sun-related.

⁸ See the decision of the Board of Appeal in *Alfa-Beta Vassilopoulos AE v Agro de Bazan*, Case R 82/2011-4, at [16], which was referred to with approval by Mr Iain Purvis QC sitting as the Appointed Person in *Kunze Folien GmbH v Kartell UK Limited*, BL O/085/14, at [29].

Conclusions on Likelihood of Confusion

48. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.⁹ I must also consider the average consumer of the goods and services, the nature of the purchasing process and bear in mind that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa.¹⁰

49. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. The global assessment is supposed to emulate what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.¹¹ The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.¹²

50. Under section 5(2)(b) of the Act, the Opponent must establish that the marks are similar, that the goods or services are identical or similar, and that this gives rise to a likelihood of confusion, including a likelihood of association.

51. Therefore 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, but *mere association*, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient for a finding of likelihood of confusion.

52. There are three sets of circumstances where a consumer may associate a later mark with an earlier mark, the one leads to direct confusion, the second leads to indirect confusion, and in the third circumstance, there is no confusion, merely

⁹ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

¹⁰ *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*, Case C-39/97, paragraph 17

¹¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

¹² See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

association:¹³ (1) direct confusion is a simple matter of the consumer mistaking one mark for the other; (2) indirect confusion arises where the consumer recognises that one mark is different from the other, but because of the marks' similarities, believes that the goods bearing the later mark come from the same undertaking or from an economically linked undertaking¹⁴ - such instances may arise for example, where the later mark simply adds a non-distinctive element to the earlier mark of the kind one would expect to find in a sub-brand or brand extension;¹⁵ (3) in *Sabel v Puma*,¹⁶ the CJEU noted that the third circumstance is "*where the public considers the sign to be similar to the mark and perception of the sign calls to mind the memory of the mark, although the two are not confused*", and clarified that this is mere association in the strict sense, which is not in itself a sufficient ground for concluding that there is a likelihood of confusion.

53. I summarise my findings as follows:

- (1) at least some of the competing goods and services are identical;
- (2) the average consumer is a member of the general public who will pay a medium degree of attention during the selection of the goods and services;
- (3) the selection process is predominantly visual, although I do not discount an aural component;
- (4) the marks are visually and aurally similar to a low to medium degree and whilst they share some conceptual overlap, they are conceptually similar to no more than a low degree;
- (5) the earlier mark has a low degree of inherent distinctive character.

54. Taking all the above factors into consideration, I do not consider that there is a likelihood of direct confusion. Although some of the goods and services are identical, and although the marks share the word BEAUTY and the same first three letter

¹³ See to that effect the decision of the Court of Justice of the European Union ('CJEU') in *Sabel BV v Puma AG*, Case C-251/95, at [16] and [26].

¹⁴ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

¹⁵ For a more detailed distinction between direct and indirect confusion, see the decision of Mr Iain Purvis QC, sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, paragraphs 16-17. This formulation was noted with approval by Arnold LJ in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207.

¹⁶ Case C-251/95, at [16] and [26].

sequence SOL, the differences created by SOLA LUNA are sufficient to prevent the average consumer from mistaking one mark for the other. In particular, the additional word LUNA, and the resulting solar/lunar impression of the Applicant's mark, and its longer length, create clear visual, aural and conceptual differences which will not be overlooked.

55. Nor do I consider that there is a likelihood of indirect confusion. The words SOLA LUNA BEAUTY do not merely modify SOL BEAUTY in a way which the average consumer would perceive to be a brand extension, sub-brand or variant of the Opponent's mark. Rather, SOLA LUNA creates a distinct impression from SOL alone. In the Applicant's mark, SOLA and LUNA work together: SOLA is likely to call 'solar' to mind, while LUNA is likely to call 'lunar' to mind. The result is a more readily apparent solar/lunar impression. By contrast, any allusion in SOL to the word 'solar' or the sun, if perceived at all, is weaker and less immediate, and is not reinforced by any corresponding 'lunar' element. That difference points away from the average consumer seeing the Applicant's mark as a brand extension, sub-brand or variant of the Opponent's mark, and therefore points away from a finding that they would attribute the marks to the same or economically linked undertaking.

56. Any similarity between the marks is likely to amount only to one mark bringing the other to mind. That is mere association in the strict sense, which does not lead to a likelihood of confusion. The average consumer may recognise the overlap between SOL and SOLA, and the shared descriptive word BEAUTY, but would not, because of those similarities, be confused as to the origin of the goods or services. That remains the case even where the marks are used in relation to identical goods and services.

Final remarks

57. As the outcome is no likelihood of confusion on the basis that some of the competing goods and services are identical, it follows that the outcome would also be the same where the goods and services are only similar. Therefore, there is no need to return to consider the rest of the Applicant's specification.

OUTCOME

58. The opposition under section 5(2)(b) of the Act fails. Subject to any appeal, the contested trade mark application, number 4100173, shall proceed to registration.

COSTS

59. The Applicant has been successful and is therefore entitled to an award of costs based on the contributory scale set out in Tribunal Practice Notice 1/2023. In the circumstances I award the Applicant the sum of £250 for its consideration of the statement of grounds and for its preparation of a counterstatement.

60. I therefore order **Stephenson's Online LTD** to pay **Tik Tok Ltd.** the sum of **£250** 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 24th day of June 2026

Daniela Ferrari

For the Registrar

Annex 1

Goods and services applied for

Class 3	Cleaning, polishing, scouring preparations; bleaching agents and preparations; polishing agents, materials and preparations; soaps; cleansers for the face, skin and body; toning preparations; moisturisers; non-medicated toilet preparations; perfumery; perfumes; fragrance; colognes; perfume oils; essential oils; sun-care preparations (cosmetic products); mouth washes; depilatory preparations; shaving preparations; deodorants and anti perspirants; face masks; shower and bath preparations; cosmetics; creams for the face, skin and body; make-up; preparations for care of the hair; shampoos; hair conditioners; hair gels; hair sprays; hair mousse; hair lacquers; hair colourants; dandruff creams (not for medical treatment); shampoos for dandruff treatment (not for medical treatment); dandruff lotions (not for medical treatment); hair balsams for dandruff treatment; scrubs for the skin, face and body; bubble bath; bath foams; bath melts; bath oils; bath pearls; bath salts and crystals; non-medicated bath salts containing effervescent materials; shower gels; nail polish; nail gel; nail treatments and creams; nail polish removers; aromatherapy preparations; cleansing pads, wipes, cotton wool pads and buds; decorative transfers and skin jewels for cosmetic purposes; self-tanning preparations; preparations and substances for use in oral hygiene; preparations and substances for dental hygiene; toothpastes; toothpowders; tooth gels, tooth tablets; tooth polishes, breath fresheners; preparations for cleaning dentures; preparations for whitening teeth; preparations for removing stains from teeth and dentures.
Class 35	Advertising, publicity, marketing, promotion of beauty and cosmetic products; business management; marketing research in the fields of beauty and cosmetics; online advertising and marketing services, namely, integrated marketing and digital content creation in the fields of beauty and cosmetics; on-line advertising on computer networks in the fields of beauty and cosmetics; pay per click advertising; preparation of advertisements for others; dissemination of advertising matter; advertising through all public communication means; sales promotion for others; providing advice in the field of business management and marketing; presentation of goods on communication media for retail purpose; provision and rental of advertising space on mobile applications; business advisory and information services; providing e-commerce platforms for retail purposes via internet; advertising for others; advertising, including on-line advertising on a computer network; advertising material (dissemination of -); advertising of business web sites; advertising of the goods of other vendors, enabling customers to conveniently view and compare the goods of those vendors; advertising of the services of other vendors, enabling customers to conveniently view and compare the services of those vendors; advertising on the internet for others; advertising services relating to the sale of goods; advertising services to create corporate and brand identity; advertising the goods and services of online vendors via a searchable online guide; advertising via electronic media and specifically the internet; analysis relating to marketing; appraisal of business opportunities; arranging and conducting of marketing events; customer relationship management; promoting the goods and services of others via computer and communication networks; media marketing services to others, namely, optimization services in the nature of online creative marketing content design services; production and distribution of online integrated digital advertising content; production of online advertising matter and commercials; marketing, advertising, and promoting the retail goods and services for others through online and integrated video; retail services in connection with the sale of cleaning, polishing, scouring preparations, bleaching agents and preparations, polishing

	agents, materials and preparations, soaps, cleansers for the face, skin and body, toning preparations, moisturisers, non-medicated toilet preparations, perfumery, perfumes, fragrance, colognes, perfume oils, essential oils, sun-care preparations (cosmetic products), mouth washes, depilatory preparations, shaving preparations, deodorants and anti perspirants, face masks, shower and bath preparations, cosmetics, creams for the face, skin and body, make-up, preparations for care of the hair, shampoos, hair conditioners, hair gels, hair sprays, hair mousse, hair lacquers, hair colourants, dandruff creams (not for medical treatment), shampoos for dandruff treatment (not for medical treatment), dandruff lotions (not for medical treatment), hair balsams for dandruff treatment, scrubs for the skin, face and body, bubble bath, bath foams, bath melts, bath oils, bath pearls, bath salts and crystals, non-medicated bath salts containing effervescent materials, shower gels, nail polish, nail gel, nail treatments and creams, nail polish removers, aromatherapy preparations, cleansing pads, wipes, cotton wool pads and buds, decorative transfers and skin jewels for cosmetic purposes, self-tanning preparations, preparations and substances for use in oral hygiene, preparations and substances for dental hygiene, toothpastes, toothpowders, tooth gels, tooth tablets, tooth polishes, breath fresheners, preparations for cleaning dentures, preparations for whitening teeth, preparations for removing stains from teeth and dentures.
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Annex 2

Goods and Services for which the Opponent's 'Figurative Mark' (No. 3561413) and 'Word Mark' (No. 3561406) are registered

It is noted that the Class 3 specification contains duplicated terms, namely “**scented body spray; beauty masks; blush**” (shown in emboldened font in the table below for ease of reference).

Class 3	Bath and shower preparations; bath and shower foam; bath and shower gel; bath bombs; bubble bars; bath jellies; bath creams; bath gel; bath oil; bath salts; shower creams; soaps; soaps and gels; soaps for body care; shower jellies; soaps in gel form; soaps in liquid form; shampoo; conditioner; hair gel; hair masks; hair serums; hair spray; hair treatments; hair foam; hair care preparations; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling preparations; beauty care preparations; scented body lotions; scented body lotions and creams; scented body spray ; skin care preparations; skin cleansers; skin conditioners; skin cream; oils, creams and lotions for the skin; skin lotion; skin make-up; skin masks; skin moisturiser; skincare cosmetics; skincare preparations; beauty care cosmetics; beauty creams; beauty creams for body care; beauty gels; beauty lotions; beauty masks ; beauty milk; beauty serums; beauty serums with anti-ageing properties; beauty tonics for application to the body; blush ; blusher; body and facial butters; body and facial creams [cosmetics]; body and facial gels [cosmetics]; body and facial oils; body butter; body cleansing foams; body cream; body glitter and dusts; glitter spray; glitter for cosmetic purposes; body mist; body polish; body dusts; body powder; body scrub; cleansing cream; cleansing foam; cleansing gels; cleansing lotions; cleansing masks; cleaning preparations; essential oils; aromatherapy preparations; massage preparations; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; make-up and make-up removing preparations; sun-tanning and sun protection preparations; cosmetics; makeup; lipstick; lip gloss; lip scrubs; non-medicated lip balm; eye makeup; blush ; skin bronzer; mascara; cosmetic pencils; skin, body, and facial cleansers, creams, lotions, masks, powders, moisturizers, concealers, oils, primers, and scrubs; perfume; eau de toilette; scented body spray ; makeup remover; beauty masques or facial packs; bath oils; rouge; liquid rouge; sun block; self-tanning skin preparations; shower gel; body firming gels; nail polish; face glitter; facial highlighters; makeup foundations; eyebrow gels and pencils; false eyelashes; petroleum jelly; pre-moistened or impregnated cleansing pads, tissues or wipes; beauty masks ; facial packs.
Class 35	Retail services relating to cosmetics, skincare, haircare, perfumery and beauty products; online retail services relating to cosmetics, skincare, haircare, perfumery and beauty products; mail order retail services for cosmetics, skincare, haircare, perfumery and beauty products; ordering services for third parties; sales promotion for third parties; business management; business management services relating to electronic commerce; accounting for third parties; brand creation services; brand strategy services; design of advertising logos; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; advisory, information and consultancy services relating to all of the aforesaid services.
Class 39	Distribution services; distribution of retail goods for third parties; distribution of retail goods; storage of retail goods for third parties; storage of retail goods;

	packaging services; packaging of retail goods; packaging and storage of retail goods for third parties.
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Annex 3

Goods for which the Opponent's 'Series Mark' (No. 4046908) is registered

It is noted that the terms in emboldened font in the table below, namely “**scented body spray; beauty masks; blush**” are not in duplicate as they are in the Opponent's other two registrations (see Annex 2 for details). This means that for all intents and purposes, the Class 3 specifications across all three of the Opponent's registrations are identical to each other.

Class 3	Bath and shower preparations; bath and shower foam; bath and shower gel; bath bombs; bubble bars; bath jellies; bath creams; bath gel; bath oil; bath salts; shower creams; soaps; soaps and gels; soaps for body care; shower jellies; soaps in gel form; soaps in liquid form; shampoo; conditioner; hair gel; hair masks; hair serums; hair spray; hair treatments; hair foam; hair care preparations; preparations for the care of the scalp and hair; shampoos and conditioners; hair colourants; hair styling preparations; beauty care preparations; scented body lotions; scented body lotions and creams; scented body spray ; skin care preparations; skin cleansers; skin conditioners; skin cream; oils, creams and lotions for the skin; skin lotion; skin make-up; skin masks; skin moisturiser; skincare cosmetics; skincare preparations; beauty care cosmetics; beauty creams; beauty creams for body care; beauty gels; beauty lotions; beauty masks ; beauty milk; beauty serums; beauty serums with anti-ageing properties; beauty tonics for application to the body; blush ; blusher; body and facial butters; body and facial creams [cosmetics]; body and facial gels [cosmetics]; body and facial oils; body butter; body cleansing foams; body cream; body glitter and dusts; glitter spray; glitter for cosmetic purposes; body mist; body polish; body dusts; body powder; body scrub; cleansing cream; cleansing foam; cleansing gels; cleansing lotions; cleansing masks; cleaning preparations; essential oils; aromatherapy preparations; massage preparations; lip care preparations; talcum powder; cotton wool, cotton sticks; cosmetic pads, tissues or wipes; make-up and make-up removing preparations; sun-tanning and sun protection preparations; cosmetics; makeup; lipstick; lip gloss; lip scrubs; non-medicated lip balm; eye makeup; skin bronzer; mascara; cosmetic pencils; skin, body, and facial cleansers, creams, lotions, masks, powders, moisturizers, concealers, oils, primers, and scrubs; perfume; eau de toilette; makeup remover; beauty masques or facial packs; bath oils; rouge; liquid rouge; sun block; self tanning skin preparations; shower gel; body firming gels; nail polish; face glitter; facial highlighters; makeup foundations; eyebrow gels and pencils; false eyelashes; petroleum jelly; pre-moistened or impregnated cleansing pads, tissues or wipes; facial packs.
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