

O/0528/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 4147636
IN THE NAME OF THE HOPE COMPANY, INC.
TO REGISTER THE FOLLOWING TRADE MARK:**

HOPE'S PERFECT GLASS

IN CLASS 3

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 453953
BY GTECHNIQ LTD**

Background and pleadings

1. The Hope Company, Inc. (“the applicant”) applied to register the trade mark **HOPE’S PERFECT GLASS** (“the applicant’s mark”) in the UK on 14 January 2025, under number 4147636. It was accepted and published in the Trade Marks Journal on 31 January 2025 in respect of the following goods:

Class 3: cleaning preparations; liquid cleaner; cleaning sprays; cleaning preparations for household purposes.

2. On 30 April 2025, GTECHNIQ LTD (“the opponent”) opposed the applicant’s mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the goods. This is on the basis of its UK trade mark number 4096779, **G6 PERFECT GLASS** (“the opponent’s mark”). The opponent’s mark was filed on 6 September 2024 and became registered on 29 November 2024. It stands registered for the following goods, all of which are relied upon by the opponent:

Class 3: Aircraft cleaning preparations; Automobile cleaners; Chrome cleaners; Cleaning agents for glass; Cleaning and fragancing preparations, other than for personal use; Cleaning preparations; Cleaning sprays; Glass cleaners; Glass cleaning preparations; Marine vessel cleaning preparations; Vehicle cleaning preparations; Window cleaner; Window cleaners [polish]; Window cleaning compositions; Windscreen cleaning liquids; Windscreen cleaning preparations; Windshield cleaner fluids; Windshield cleaning liquids.

3. As the filing date of the opponent’s mark is earlier than the filing date of the applicant’s mark, the opponent’s mark constitutes an earlier mark in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods identified without having to establish genuine use.

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

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

6. The opponent is professionally represented by Brand Protect Limited, and the applicant is represented by Venner Shipley LLP. Neither party filed evidence. A hearing was not requested, but both parties filed submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018¹ requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Section 5(2)(b)

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark

9. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

10. 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*:²

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

² [2025] UKSC 25

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;
- (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (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

11. In *Gérard Meric v OHIM*³, the General Court (“GC”) confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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.”

12. The goods to be compared are as follows:

The opponent's goods	The applicant's goods
<i>Class 3: Aircraft cleaning preparations; Automobile cleaners; Chrome cleaners; Cleaning agents for glass; Cleaning and fragancing preparations, other than for personal use; Cleaning preparations; Cleaning sprays; Glass cleaners; Glass cleaning preparations; Marine vessel cleaning preparations; Vehicle cleaning</i>	<i>Class 3: cleaning preparations; liquid cleaner; cleaning sprays; cleaning preparations for household purposes.</i>

³ Case T- 133/05

<pre>preparations; Window cleaner; Window cleaners [polish]; Window cleaning compositions; Windscreen cleaning liquids; Windscreen cleaning preparations; Windshield cleaner fluids; Windshield cleaning liquids.</pre>	
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13. In its submissions in lieu, the opponent submits that the applicant's goods are identical to the opponent's goods. In its counterstatement, the applicant denies that *cleaning preparations for household purposes* are identical or similar to the opponent's goods, and makes no admissions regarding the other goods.

Cleaning preparations.

14. These goods are identical on a literal basis with the opponent's *cleaning preparations*.

Cleaning preparations for household purposes.

15. These narrower goods are included in the opponent's wider term *cleaning preparations*. They are therefore identical under the principle set out in *Meric*.

Cleaning sprays.

16. These goods are identical on a literal basis with the opponent's *cleaning sprays*.

Liquid cleaner.

17. It is my view that the applicant's goods are included in the opponent's wider term such as *cleaning preparations*. Alternatively, the applicant's goods include the opponent's narrower term *windshield cleaning liquids*. In either case, the goods are identical as per the principle in *Meric*.

Average consumer and the purchasing act

18. In *Iconix Luxembourg Holdings* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,⁴ where he pointed out that:

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

⁴ [2024] EWCA Civ 262

19. The average consumer for the goods will be members of the general public. The cost of purchase is likely to vary depending on the quality of the ingredients used within the products, but overall, the goods will be reasonably inexpensive. Overall, the goods are likely to be purchased on a fairly frequent basis. Several factors may influence the average consumer when purchasing the goods, such as the type of fragrance emitted, the effectiveness of the product, and if the product is tested on animals. Based on these factors, I find that the average consumer is likely to pay a medium level of attention when purchasing the goods. The goods will be selected from specialist shops (such as pet shops), general retail outlets, or online. The customer will self-select the goods from the display shelves, or by selecting the image of their desired product if purchasing online. The visual component will therefore dominate the purchasing process, but I do not discount aural considerations, such as word-of-mouth recommendations, or placing telephone orders.

Comparison of marks

20. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*⁵ 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.”

21. 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

⁵ Case C-591/12P

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

22. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
G6 PERFECT GLASS	HOPE'S PERFECT GLASS

23. In its submissions in lieu, the opponent argues that the marks' "differing elements "G6" and "HOPE'S" do not influence the overall conceptual impression given by the marks", and submits that "PERFECT GLASS" takes up more room on the product and is visually more impressionable". It also denies that the words "PERFECT GLASS" are descriptive for cleaning products. In its counterstatement, the applicant argues that the words "PERFECT GLASS" are "wholly descriptive" in relation to cleaning goods. In its submissions in lieu, the applicant submits that the overall impression of the opponent's mark "is clearly dominated by the prefix "G6"" as "this element is placed first and, since the wording "G6" has no descriptive meaning in relation to the goods, it is clearly the dominant and most distinctive element". It also argues that in the applicant's mark, "the prefix "HOPE'S" is clearly the dominant and most distinctive element" on the basis that it is "placed first and has no descriptive meaning in relation to the goods".

24. The opponent's mark is a plain word mark written in upper case, with no other elements within the mark. The term "G6" does not appear to have any descriptive, non-distinctive, or otherwise allusive meaning in relation to the class 3 goods. It is therefore, my view that the average consumer will understand it as a term which is distinctive in relation to the goods. I am of the view that the average consumer of the goods will understand the words "PERFECT GLASS" as a laudatory term which strongly alludes to the intended purpose of the goods, i.e. cleaning goods which result in flawless-looking glass. I therefore agree with the opponent in that the words "PERFECT GLASS" are not wholly descriptive. However, it is my view that the words "PERFECT GLASS" are nonetheless lower in distinctiveness due to their laudatory and strongly allusive connection to the goods. On this basis, it is considered that the mark's overall impression is dominated by the distinctive term "G6" at the beginning of

the mark. The allusive words “PERFECT GLASS” still contribute, but to a much lesser degree.

25. The applicant’s mark is a plain word mark written in upper case, with no other elements within the mark. It is my view that, the average consumer will understand the term “HOPE” as a female forename. Whilst this more commonly used as a noun relating to a feeling of hopefulness, I believe that the average consumer is more likely to interpret the reference to “HOPE” in the mark as a name due to the fact that it appears in the possessive form, “HOPE’S”. It is my view that the words “PERFECT GLASS” will be interpreted in the same manner as the opponent’s mark, i.e. a strongly allusive and laudatory term relating to the intended purpose of the class 3 goods. On this basis, it is considered that the mark’s overall impression is dominated by the distinctive term “HOPE’S” at the beginning of the mark. The allusive words “PERFECT GLASS” still contribute, but to a much lesser degree.

Visual comparison

26. In its submissions in lieu, the opponent states that “the Opponent’s mark is fourteen characters long and the Applicant’s mark is seventeen characters long” and therefore there are “only three characters difference in the length of the marks”. In its submissions in lieu, the applicant submits that “since the Application and the Earlier Mark differ in terms of their first and most distinctive element, visually they are clearly dissimilar”.

27. The competing marks are visually similar as they both contain the same final two words “PERFECT GLASS”. The competing marks differ visually as the opponent’s mark has the term “G6” at the beginning of its mark, whereas the applicant has the word “HOPE’S” at the beginning. The beginnings of words tend to have more visual impact than the ends,⁶ which, in my view, results in the visual difference created by these differing initial elements being more significant. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are visually similar to a medium degree.

⁶ See paragraph 81 of *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

Aural comparison

28. In its submissions in lieu, the opponent submits that the parties' marks are "identical in their ending sounds (both a distinctive "SS" sound) which is prominent and memorable and leaves a lasting impression as it is the last sound heard when the marks are spoken". In its submissions in lieu, the applicant submits that "[a]urally, the marks are... dissimilar. The pronunciation of the element "G6"... is completely different from the pronunciation of the element "HOPE'S".

29. The competing marks are aurally similar as they both contain the same two words (consisting of three syllables in total) "PERFECT GLASS" at the end of the marks. The competing marks differ aurally as the opponent's mark begins with the two-syllable term "G6", whereas the applicant's mark begins with the one-syllable word "HOPE'S". As above, the beginnings of words tend to have more aural impact than the ends, which, in my view, results in the aural difference created by these differing initial elements being more significant. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are aurally similar to a medium degree.

Conceptual comparison

30. In its submissions in lieu, the opponent argues that the term "PERFECT GLASS" is not descriptive, as it submits that "[t]he removal of imperfections from glass is suggestive of a product that fulfils this task in the manufacturing process of the glass, as once glass has set or hardened, imperfections cannot be removed without the glass being irrevocably damaged. In contrast, cleaning preparations may give shine and remove dust from the glass surface but cannot repair chipped, cracked or scratched glass". It therefore argues that "when faced with the term "PERFECT GLASS" the average consumer would immediately perceive, without further thought, a product used in the manufacturing process of glass, and not a cleaning product". It also submits that applicant's goods are "cleaning products in general, and therefore relates to cleaning of ceramics, metal, wood, laundry, skin, hair, teeth, leather etc for kitchens, bathrooms, vehicles, vessels, aeroplanes, the human body, animals, leather goods".

31. In its submissions in lieu, the applicant submits that "[c]onceptually, the marks are also very different. The meaning allocated to each mark will depend on the meanings given to the prefixes "G6" and "HOPE'S", which are very different".

32. As stated above, it is my view that the term “G6” in the opponent’s mark will be understood as an invented term. The Oxford English Dictionary defines “PERFECT” as meaning “in a state of complete excellence; free from any imperfection or defect of quality; that cannot be improved upon; flawless, faultless”. It is my view that this combines with “GLASS” to form a unitary term, “PERFECT GLASS”. It is my view that a significant portion of consumers would understand it as a laudatory term which strongly alludes to the intended purpose of the cleaning goods in class 3, i.e. cleaning products that will help the user clean glass so that it is free from imperfections. The opponent argues that the average consumer would immediately associate the term “PERFECT” with the concept of removing imperfections at the manufacturing stage, rather than something that can be achieved using cleaning products. However, I disagree that consumers would only perceive an imperfection on or in glass as being possible at manufacturing stage, as it is my view that imperfection may be cosmetic (regardless of whether it is temporary) as well as structural. It is therefore my view that a significant proportion of consumers would understand the term “PERFECT GLASS” as being a reference to cleaning goods which helps them achieve glass that appears flawless or free of cosmetic imperfections. Whilst I acknowledge that the opponent has suggested that the term is distinctive when used on cleaning products for other types of materials, it is my view that a significant proportion of consumers would understand this to allude to the idea that its primary purpose is to clean glass to a high standard, even if it could be used on other materials too. On this basis, when confronted with the term “PERFECT GLASS”, I am of the view that a significant proportion of consumers would understand it as a laudatory and unitary phrase promoting the idea of achieving flawless glass. As the term “G6” will be perceived as a term with no connection to the goods and does not mean anything that could combine with the following words “PERFECT GLASS”, it is considered that “G6” does not form a unitary meaning with the words “PERFECT GLASS”.

33. As stated above, the applicant’s mark will be understood a reference to the female name “HOPE” in the possessive form, “HOPE’S”. It is my view that the words “PERFECT GLASS” will be interpreted in the same manner as the opponent’s mark, i.e. a strongly allusive and laudatory term relating to the intended purpose of the class 3 goods. In totality, it is my view that a significant proportion of consumers will

understand the mark as being a cleaning product which cleans glass effectively which is offered by a person or undertaking named “HOPE”.

34. The competing marks are conceptually similar as they both contain the words “PERFECT GLASS” which will be understood in the same way by a significant proportion of consumers. However, given that the overlapping elements are strongly allusive of the goods, it is my view that it is not a distinctive overlap. The competing marks differ conceptually as the applicant’s mark also includes the concept of a female named “HOPE”. The opponent’s mark also contains the term “G6”. However, it is my view that this will be understood as an invented term, and therefore this element is conceptually neutral. Bearing in mind my analysis of the marks’ overall impressions, I am of the view that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier mark

35. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,⁷ the CJEU stated that:

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

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as

⁷ Case C-342/97

originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

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

37. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the opponent has not filed any evidence of use. As such, I have only the inherent position to consider.

38. Neither party specified a degree of inherent distinctiveness for the earlier mark, but in its submissions in lieu, the opponent submits that its mark is distinctive, and argues specifically that “the common element is not descriptive and therefore carries more than the minimum level of distinctiveness”. In its submissions, the applicant refers to the term “G6” as “distinctive”, whereas in its counterstatement, it refers to the word “PERFECT GLASS” as “wholly descriptive”.

39. As stated previously, the term “G6” will be understood by the average consumer as an invented term which has no meaningful connection to the goods. As such, this element of the mark is distinctive to a medium degree. It is my view that the words “PERFECT GLASS” will be perceived by a significant portion of consumers as being a laudatory term which strongly alludes to the intended purpose of the cleaning products in class 3, i.e. to clean the imperfections off glass so that it appears flawless. As such, this element of the mark is lower in distinctive character. Overall, I therefore find that the opponent’s mark in totality has a medium level of inherent distinctive character due to the inclusion of the distinctive “G6” element.

Global assessment – conclusions on likelihood of confusion

40. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that

exists between the marks and the goods down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

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

42. In its submissions in lieu, the opponent submits that, in the opponent's mark, "the first word is only two letters long", which it argues "increases the chance of the "G6" element being missed or misremembered by the average consumer, especially a consumer in a hurry and also given the consumer's imperfect recollection". It argues that, as the words "PERFECT GLASS" constitutes "two thirds" of the competing marks, "there is a high likelihood of association between the brands". It cites a series of EU cases "in which signs with identical endings were found to be confusingly similar".

43. However, whilst the opponent claims these EU cases to be "comparable", I am not persuaded that they are entirely on all fours with the facts of this case. In my view these cases can be distinguished from the facts of the immediate case, given that the differing initial elements of the marks ("G6" versus "HOPE'S") are distinctive and differ greatly from one another, and the shared element "PERFECT GLASS" is lower in distinctive character in relation to the goods.

44. Furthermore, I acknowledge that a common element at the ends of marks may lead to confusion, such as in *Bristol Global Co Ltd v EUIPO*,⁸ in which the GC held that there was a likelihood of confusion between AEROSTONE (slightly stylised) and STONE in relation to identical goods (land vehicles and automobile tyres). In this case, although the marks' beginnings differed, the distinctive common element (STONE)

⁸ Case T-194/14.

was sufficient to create the necessary degree of similarity between the marks as wholes for the opposition before the EUIPO to succeed. However, this is not always the case, especially as, in the immediate case, the common element at the end of the competing marks is lower in distinctive character.

45. In its submissions in lieu, the applicant denies a likelihood of confusion on the basis that "...the dissimilarities between the marks are so pronounced that they outweigh any overlap in goods" and that "the interdependence principle confirms that similarity of goods alone cannot create confusion when the marks themselves are clearly different".

46. Earlier in this decision I found that the applicant's goods are identical to the opponent's goods. The average consumer of the goods will be the general public. The average consumer is likely to pay a medium degree of attention when selecting the class 3 goods. The goods will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a medium degree, aurally similar to a medium degree, and conceptually similar to a medium degree. The earlier mark has a medium level of inherent distinctive character due to the inclusion of the distinctive term "G6".

47. The overall impression of the opponent's mark lies primarily in the distinctive term "G6", and the overall impression of the applicant's mark lies primarily in the distinctive term "HOPE'S". In both marks, the laudatory and strongly allusive words "PERFECT GLASS" play a much lesser role. The addition of the distinctive terms "G6" and "HOPE'S" at the beginning of the competing mark constitutes a significant difference between the marks, and it is unlikely that the average consumer would overlook these additional words. On the contrary, it is upon these elements that the consumer will seek to affix their recollection of the marks. As such, these differences are likely to be sufficient to prevent the average consumer from mistaking one mark for the other. I therefore find that there is no likelihood of direct confusion, even in respect of identical goods.

48. I now go on to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*,⁹ Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

⁹ BL O/375/10

49. I bear in mind that these categories are not intended to be an exhaustive list. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,¹⁰ Arnold LJ approved Mr Purvis's formulation but added:

“13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] ‘a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion’. Mr Mellor went on to say that, if there is no likelihood of direct confusion, ‘one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion’. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

50. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*).¹¹ This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks. As per *L.A. Sugar Limited v By Back Beat Inc* (set out above), indirect confusion should be identified in cases where the average consumer is likely to notice the differences between the competing marks but assume an economic link between the two undertakings based on their similarities.

51. I also consider the relevance of *Medion v Thomson*¹² and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*,¹³ Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*,¹⁴ on the court's earlier judgment in *Medion*. The judge said:

“18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark

¹⁰ [2021] EWCA Civ 1207

¹¹ BL O/547/17

¹² Case C-120/04

¹³ [2015] EWHC 1271 (Ch)

¹⁴ Case C-591/12P

contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

52. It is my view that the term “PERFECT GLASS” in the parties’ marks will be understood by the relevant public as being a strongly allusive and laudatory reference to the intended purpose of the class 3 goods, i.e. cleaning goods which remove imperfections to result in flawless-looking glass. As a result, I find that, whilst the term is not directly descriptive, the term is lower in distinctiveness. I am of the view that the word “G6” does not form a unitary meaning with the following words “PERFECT GLASS”. However, it is my view that, although the strongly allusive term “PERFECT

GLASS” features in both marks, it does not result in there being a likelihood of confusion between them. This is because the strongly allusive nature of the words “PERFECT GLASS” is such that I do not consider that the opponent’s mark would necessarily be viewed as a composite mark which consists of two signs (namely “G6” and “PERFECT GLASS”) in the way described by *Whyte and Mackay*. Instead, it is my view that consumers will view the opponent’s mark in totality as the distinctive word “G6” followed by words which are a suggestive reference to the goods available under the mark. As a result, it is my view that the *Medion* principle does not apply in the immediate case.

53. It is therefore my view that the average consumer, when paying a medium level of attention, would notice the differences between the marks but would not assume an economic link between the two undertakings. This is on the basis that the shared words “PERFECT GLASS” are not so strikingly distinctive that the average consumer would assume that only the opponent was using it. Rather, it is my view that consumers would perceive the similarities between the marks as purely coincidental; in my view, they would be attributed to different undertakings using similar language which strongly alludes to the goods’ purpose. Furthermore, the visual and aural differences between the marks are not consistent with a brand extension or sub-brand of a house mark, so the average consumer is unlikely to interpret it in this manner. For instance, I see no reason why an undertaking would remove the distinctive term “G6” (the word which also gives the mark as a whole its distinctiveness) and replace it with a different distinctive term “HOPE’S”, resulting in a different mark. Whilst I acknowledge that the categories in *L.A. Sugar* are not exhaustive, I can see no other basis for concluding that the average consumer would perceive the marks to be from the same, or economically linked, undertakings. I therefore find that there is no likelihood of indirect confusion between the competing marks, notwithstanding the identity of the goods.

54. Consequently, I find that there is no likelihood of indirect confusion.

Conclusion

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

Costs

56. The applicant has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances I award the applicant the sum of £650 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a counterstatement: £300

Preparing submissions in lieu £350

57. I therefore order GTECHNIQ LTD to pay The Hope Company, Inc. the sum of £650. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings

Dated this 25th day of June 2026

K SERRAVALLE

For the Registrar