

O/0529/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004056012

IN THE NAME OF DACKS HOLDINGS LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

DREAMCATCHER

IN CLASSES 20 AND 24

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000452080

BY DREAMS LIMITED

Background and pleadings

1. On 24 May 2024, Dacks Holdings Limited (“***the Applicant***”) applied to register the trade mark shown on the cover page of this decision in the UK under number UK00004056012 (“***the Contested Mark***”). The application was accepted and published in the Trade Marks Journal on 25 October 2024. Registration is sought for the following goods:

Class 20: Beds, mattresses, pillows and cushions; bolsters; bumper guards for cots and cribs, other than bed linen; bedding, except linen; animal housing and beds; beds for household pets; dog beds.

Class 24: Textiles; bedroom textile fabrics; textile goods for use as bedding; bed linen made of non-woven textile material; coverings for furniture; mattress covers; bed coverings; bed sheets; bed spreads; bed throws; bed blankets; bed quilts; bed valances; bed canopies; bed linen and blankets; pillowcases; pillow sheets.

2. On 20 January 2025, Dreams Limited (“***the Opponent***”) opposed the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“***the Act***”).
3. The Opponent relies upon the following earlier registrations:

(i) UK Registration no. UK00917963494¹ (“***the DREAMS mark***”)

Filing date: 01 October 2018

Registration date: 15 February 2019

Relying upon all the goods in classes 20 and 24 and some services in class 35.²

Representation: DREAMS

(ii) UK Registration no. UK00918169119³ (“***the DREAM COACH mark***”)

¹ Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent’s mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

² See Annex 1 to this decision.

³ This mark is a comparable mark and so retains the filing date of the EU trade mark from which it was created.

Filing date: 19 December 2019

Registration date: 22 May 2020

Relying on all the goods and services in classes 20, 24 and 35.⁴

Representation: DREAM COACH

(iii) UK registration no. UK00003453941 (“*the DREAM BIGGER mark*”)

Filing date: 24 December 2019

Registration date: 20 March 2020

Relying on all goods and services in classes 20, 24 and 35.⁵

Representation: DREAM BIGGER

(iv) UK registration no. UK00003849391 (“*the figurative mark*”)

Filing date: 15 November 2022

Date of registration: 17 March 2023

Relying upon all the goods in classes 20 and 24 and some services in class 35.⁶

Representation: 

4. By virtue of their earlier filing dates, the above registrations constitute earlier marks within the meaning of section 6 of the Act. As the DREAM COACH, the DREAM BIGGER and the figurative mark had not completed their registration process more than five years before the filing date of the application in issue, they are not subject to the use provisions contained in section 6A of the Act. The Opponent can, therefore, rely upon all of the goods and services it has identified without having to demonstrate use of the marks.
5. As the DREAMS mark completed its registration procedure more than five years before the filing date of the Contested Mark, it is subject to the use provisions set out in section 6A of the Act. The Opponent has stated that it has used the mark for all the goods and services relied on.
6. In its statement of grounds, the Opponent submits that the respective marks are highly similar as they share the “DREAM” element, that the goods are identical

⁴ See Annex 2 to this decision.

⁵ See Annex 3 to this decision.

⁶ See Annex 1 to this decision.

and the services are similar to the Opponent's goods and that the earlier rights have enhanced distinctive character. The Opponent contends that from all this it derives a likelihood of confusion on the part of the public, including a likelihood of association between the marks. For this reason, the Opponent requests that the application be refused in its entirety and that a cost award be made in its favour.

7. On 26 March 2025, the Applicant filed a defence and counterstatement denying all of the claims made by the Opponent and putting the Opponent to proof of use for all goods and services relied upon by the Opponent under the DREAMS mark. The Applicant requires that the opposition be dismissed and an award of costs be made in its favour.

Relevance of EU law

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

Evidence and submissions

9. During the evidence rounds, the Opponent filed evidence in chief, dated 8 July 2025, in the form of a witness statement by Matthew McAleer accompanied by exhibits MM1 – MM15. Mr McAleer is a Trade Mark attorney and Partner at Abion UK Limited (the Opponent's representative) and he has been employed at his company since May 2013. Mr McAleer is therefore authorised to file evidence on behalf of the Opponent.
10. Neither party requested a hearing, however both parties filed submissions in lieu. This decision is taken following careful consideration of the papers.
11. The Applicant is represented by Addleshaw Goddard LLP. The Opponent is represented by Abion UK Limited.

Approach

12. The Opponent relied upon four earlier registrations in the notice of opposition (as set out above in this decision). For reasons that will become later apparent, I will proceed with my assessment on the assumption that the Opponent has shown use of the DREAMS mark. In the event I find a likelihood of confusion between the Contested Mark and the DREAMS mark, I will assess the evidence of use. I also note that the figurative mark covers the same specification as the DREAMS mark and introduces an obvious further point of difference (at least visually) as it shows some degree of stylisation. Therefore, for the purposes of this opposition, if the Opponent cannot succeed on the basis of its earlier word-only DREAMS mark, it is clearly in no better position based upon the figurative mark. I proceed accordingly.
13. For the sake of clarity, I will carry out an assessment of the likelihood of confusion in relation to the DREAM COACH mark and the DREAM BIGGER mark.
14. The DREAMS mark, the DREAM COACH mark and the DREAM BIGGER mark are hereafter defined jointly as the “***Earlier Marks***”.

Decision

Section 5(2)(b)

15. The opposition is based upon section 5(2)(b) of the Act, which reads as follows:

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

(a) [...]

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

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

16. Section 5A of the Act states 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.”

17. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may

retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

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

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

Comparison of goods and services

18. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.

19. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- a. The respective uses of the respective goods or services;
- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;
- d. The respective trade channels through which the goods or services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

20. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“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”.

21. For the purposes of considering the issue of similarity of the goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.
22. The goods and services for comparison are indicated above in this decision at paragraph [1] as well as in the Annexes to this decision.
23. The Applicant admits that most of the contested goods are identical or similar to the Opponent’s goods except for “*animal housing and beds*”, “*beds for household pets*” and “*dog beds*” that differ from the Opponent’s goods in class 20.⁷

⁷ Applicant’s submissions in lieu at [20].

24. The Opponent contends that the registered goods and the contested goods in classes 20 and 24 are identical in line with the principle outlined in *Meric*.⁸
25. Having carefully considered the respective specifications, as conceded by the Applicant, I find that most of the contested goods are either identically reproduced in the Opponent's specifications or are *Meric* identical. I have provided below an example of such identical terms.
26. The Applicant's "*beds*", "*mattresses*" and "*pillows*" in class 20 as well as "*textiles*" in class 24 are identically reproduced in the Opponent's specifications. Furthermore, the Applicant's "*bedroom textile fabrics; textile goods for use as bedding; bed linen made of non-woven textile material; coverings for furniture; mattress covers; bed coverings; bed sheets*" in class 24 fall within the Opponent's wider term "*fabrics and textiles for beds and furniture*". Hence, they are *Meric* identical.
27. In light of these findings, and for reasons which will later become apparent, I will first assess the likelihood of confusion where the respective marks are used in relation to identical goods.

Average consumer and the purchasing act

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*, Case C-342/97.
29. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

⁸ Opponent's submissions in lieu at [11].

(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.

30. In its submissions in lieu, the Opponent contends that the relevant consumers for the goods at hand will pay a low degree of attention when purchasing these goods because they are commonly available in a wide-variety of shops and/or online marketplaces and because none of the goods are of particular high value.⁹ The Applicant did not file specific submissions on this point.

31. I find that the cost and frequency of purchase will vary. Some of the goods are purchased fairly frequently and are inexpensive, such as bedding or furniture covers, for example; others are purchased relatively infrequently and are more expensive, such as beds and mattresses (being examples of bedroom furniture).

⁹ Opponent's submissions in lieu at [36].

It is my view that the relevant consumer is the general public who will take various factors into consideration such as the cost, quality, materials used, and aesthetic appearance. I find the level of attention will be below medium for more frequent purchases such as bedding or furniture covers, whereas more attention might be paid to a mattress or bedroom furniture, for example, and they will likely attract a medium (or average) level of attention. I appreciate that the relevant consumers can also be businesses that will pay a medium-high degree of attention during the purchasing process due to the impact that poor quality goods could have on the reputation of their business. However, I bear in mind that the likelihood of confusion must be assessed from the perspective of the former (the general public) since they are the group who will pay the lower degree of attention.¹⁰

32. The goods are likely to be obtained by self-selection from the shelves (or a display area for bigger goods such as beds) of a specialised retail outlet (e.g., for bedroom furniture), or an online equivalent. I also consider that the goods may be purchased following perusal of advertisements (whether physical such as leaflets or online). Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there may also be an aural component to the purchase through advice sought from a sales assistant or representative.

Comparison of the marks

33. It is clear from *Sabel BV v Puma AG*, Case C-251/95 (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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

¹⁰ Case T-356/14, *CareAbout v OHMI - Florido Rodríguez (Kerashot)*, paragraph 25.

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

34. It would be wrong, therefore, to artificially dissect the trade marks, 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.

35. The respective trade marks are shown below:

Earlier trade marks	Contested trade mark
DREAMS DREAM COACH DREAM BIGGER	DREAMCATCHER

Overall impression

36. The Opponent contends that “DREAM” is the dominant and distinctive element in the Contested Mark.¹¹ The Applicant did not file submissions on this point.

37. Although I appreciate that the word “DREAM(S)” is present in all of the marks, I do not consider that it plays an independent role and it should not be interpreted in isolation. In the DREAM COACH mark and the DREAM BIGGER mark, the two words form a unit and equally contribute to each mark’s overall impression without one word dominating over the other. The overall impression of each of these marks resides in the mark as a whole.

38. Regarding “DREAMCATCHER”, I note that part of the relevant consumers is likely to perceive it as one word whereas another part of the relevant consumers will

¹¹ Opponent’s submissions in lieu at [17].

perceive the words “DREAM” and “CATCHER”, as I will further describe below. In both instances neither of these words in the Contested Mark dominates and the mark’s overall impression lies in the mark as a whole.

Visual similarity

39. The Opponent contends¹² that the earlier marks and the Contested Mark share a high visual similarity because they all begin with the word “DREAM” and that consumers pay more attention to the beginnings of marks.¹³ To this regard, I refer to the finding of Dr. Brian Whitehead, sitting as the Appointed Person, in BL O/0648/24 where he states that:

“21. [...] the principle laid down in El Corté Ingles and other case law is not a hard and fast rule of law. Rather, it is a practical rule of thumb, based on experience and observation. It amounts to no more than “All else being equal, the average consumer will tend to pay more attention to the beginnings of marks than other parts of marks, because consumers read from left to right”. [...]”

40. Therefore, although all the competing marks share the first word “DREAM-”, this is not enough to overcome the other visual dissimilarities.

41. The Opponent also contends that although the DREAM COACH and DREAM BIGGER marks differ from DREAMCATCHER in their last words, such words have a minimal overall impression and such difference does not outweigh any visual similarity created by the common DREAM element.¹⁴ As already stated above, I found that the words in the DREAM COACH and the DREAM BIGGER mark form a unit and each word equally contributes to the marks’ overall impression; in DREAMCATCHER the overall impression lies in the mark as a whole (irrespective of whether it is perceived as the combination of “DREAM” and “CATCHER” or as one word.

¹² Opponent’s submissions in lieu at [18].

¹³ *El Corte Ingles, SA v OHIM* (Cases T-183/02).

¹⁴ Opponent’s submissions in lieu at [19].

42. With regard to the DREAMS mark, the respective marks overlap in their initial word “DREAM” and differ in the additional “S” in “DREAMS” and “CATCHER” in the Contested Mark.
43. Regarding the DREAM COACH and DREAM BIGGER marks, whilst I agree with both parties that the initial word “DREAM” in the respective marks creates some degree of visual similarity, I also appreciate that the addition, respectively, of “COACH” and “BIGGER” in the earlier rights, not being reproduced in the Contested Mark, and the presence of “CATCHER” in the Contested Mark are all additional points of visual difference.
44. Therefore, following from the above considerations and bearing in mind the marks’ overall impressions, I find a medium degree of visual similarity between the DREAMS mark and the Contested Mark, whereas I find a below-medium degree of visual similarity between the DREAM COACH and the DREAM BIGGER marks and DREAMCATCHER.

Aural similarity

45. The Applicant contends that *“the Application consists of the word DREAMCATCHER, which will be pronounced as DREEM CATCHA. The Earlier Marks will be pronounced as DREEMZ, DREEM COACH and DREEM BIGGA. The overall pronunciation of individual marks clearly differ from each other on a phonetic comparison. It is submitted that the marks are not phonetically similar to each other at all”*.¹⁵
46. The Opponent argues that *“[...] as the beginning element of the marks are identical (by virtue of the word 'DREAM'), they would be considered highly phonetically similar irrespective of any pluralisation or differing second word. It is undeniable that the 'DREAM' element would be pronounced identically across all of the respective marks an resulting in a high level of phonetic similarity. The addition of the word 'CATCHER' at the end of the Subject Mark, is insufficient to outweigh the phonetic similarity of the marks created by the use of DREAM at the start of the respective marks”*.¹⁶

¹⁵ Applicant’s submissions in lieu at [14].

¹⁶ Opponent’s submissions in lieu at [21] – [23].

47. I find that “DREAMS”, “DREAM COACH”, “DREAM BIGGER” as well as “DREAMCATCHER” are all English dictionary words (or a combination of dictionary words), and they will be pronounced accordingly. I agree with the Opponent that the respective marks share at least some degree of aural similarity insofar as they overlap in the word “DREAM”. With regard to “DREAMS”, this differs from the Contested Mark for the addition of the final “z” sound given by its ending in “-S”. The aural dissimilarity is increased by the additional “-CATCHER” in the Contested Mark. Overall, I find these marks share a medium degree of aural similarity.

48. With regard to the DREAM COACH and DREAM BIGGER marks, the addition, respectively, of “COACH” and “BIGGER” along with the presence of “-CATCHER” in the Contested Mark will introduce a further point of aural difference. Overall, I find that for these marks the aural degree of similarity is below medium.

Conceptual similarity

49. The Opponent contends that all the competing marks are conceptually highly similar because they all share the same concept of DREAM/DREAMS irrespective of any additional elements contained in the marks.¹⁷ The Applicant contends that the earlier marks are not conceptually similar to the Contested Mark.¹⁸

50. Both parties submit that DREAM/DREAMS is intended as *“a series of thoughts, images, and sensations occurring in a person’s mind during sleep”*. In my mind, the average consumer may also view the “DREAMS” element as referring to “ambitions or goals that they hope to achieve”. The Applicant submits that DREAMCATCHER means a *“Native American object, consisting of a handmade hoop, onto which is woven a net of web. It is often decorated with items which are considered sacred, such as feathers and beads. A dreamcatcher is hung over a cradle or a bed, as a protective charm.”* The Opponent did not provide a definition for DREAMCATCHER.

51. With regard to the DREAMS mark and DREAMCATCHER, although I appreciate the Opponent’s argument that both marks contain the same word “DREAM”, this is

¹⁷ Opponent’s submissions in lieu at [27].

¹⁸ Applicant’s submissions in lieu at [16].

insufficient to find any conceptual similarity insofar as the Contested Mark, as a whole, has a different dictionary meaning from “dream”.

52. I agree with the Applicant that DREAMCATCHER is commonly understood as meaning a charm consisting of a typically wooden or leather hoop with a webbed centre of threads decorated with feathers, beads, etc. Therefore, I find the DREAMS mark and DREAMCATCHER to be conceptually dissimilar.

53. Turning to the DREAM COACH mark, it may be understood as referring to a person who provides guidance or coaching aimed at helping individuals identify, pursue or achieve their personal aspirations or “dreams”; it may also denote motivational or personal development support relating to the understanding and use of dreams for personal insight. The meaning of DREAMCATCHER is outlined at paragraph [50]. As stated above, although both marks share the same word “DREAM”, the respective marks have overall different meanings. Therefore, I find the marks to be conceptually dissimilar.

54. Regarding the DREAM BIGGER mark, this will be understood as an exhortation encouraging individuals to, for example, expand their ambitions, set higher goals, strive for greater achievements. The meaning of DREAMCATCHER is outlined at paragraph [50]. I find that the same reasoning outlined at paragraph [53] applies. Therefore, I find the respective marks to be conceptually dissimilar.

55. For the sake of completeness, the Opponent also contends that when two marks share an identical term, they must be found to be at least conceptually similar.¹⁹ To this end the Opponent directs me to a prior decision of the GC where the marks BLUE and ECOBLUE were found conceptually similar as they both alluded to the colour blue.²⁰

56. I note that I am not bound by previous decisions of the Tribunal or other courts. In any case, although I appreciate the Opponent’s argument that conceptual similarity should be found between marks that share one same word, the decision to which the Opponent directed me concerns different marks with different meanings and I am unable to draw any parallel between this prior decision and the case at hand.

¹⁹ Opponent’s submissions in lieu at [28].

²⁰ *Ecoblue AG v OHIM*, Case T-281/07.

57. In the eventuality I am mistaken and the competing marks share some degree of conceptual similarity insofar as they all allude to the meaning conveyed by “DREAM(S)”, I find all the competing marks have a very low conceptual similarity.

Distinctive character of the earlier trade marks

58. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, the CJEU stated that:

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

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

59. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the services, to those with high inherent distinctive character, such as invented words.

60. Dealing first with the inherent distinctiveness of the Earlier Marks, the Opponent refers me to a number of decisions from the Tribunal relating to the DREAMS mark and it contends that “*fundamentally, all of these decisions confirms that DREAMS is inherently distinctive to between a low-to medium degree for bed and bedding related terms and distinctive to a medium degree for all other goods and services*”.²¹ Notably, the Opponent directs me to one of my decisions where I found the DREAMS mark’s inherent distinctiveness to be between low and medium in that the mark is suggestive in relation to goods such as beds in that dreams are what one has while asleep.²²
61. The Applicant contends that there are numerous brands incorporating the word “DREAM” or “DREAMS” and, for this reason, the word “DREAM” has a relatively low distinctive character for the goods at hand.²³
62. I agree with the Opponent. For the goods at hand that consist of bedroom furniture and bedding that are used for sleeping (e.g., beds, mattresses and pillows), I confirm that the DREAMS mark’s inherent distinctiveness is between low and medium. With regard to those goods that have no connection to sleeping (e.g., bedroom textile fabrics or coverings for furniture) the DREAMS mark is an arbitrary dictionary word that possesses a medium degree of inherent distinctiveness.
63. With regard to the DREAM BIGGER mark, the Opponent directs me to decision BL O/1127/23 where the Hearing Officer found the DREAM BIGGER mark to be inherently distinctive to a medium degree. The Applicant did not file submissions on this point. I already described the mark’s meaning at paragraph [54]. Whilst I appreciate that the word “DREAM” by itself is allusive for some of the goods at hand, the words in the DREAM BIGGER mark hang together to create a unitary meaning, which neither alludes to nor describes the goods in question for which the marks is registered. Overall, the mark has a medium degree of inherent distinctive character.
64. Turning to the DREAM COACH mark, I already outlined its meaning at [53]. The Opponent did not provide specific arguments for this mark; however it is contended that “*the Opponent’s Marks are inherently distinctive to at least a normal degree*

²¹ Opponent’s submissions in lieu at [7].

²² BL O/0879/25 at [43].

²³ Applicant’s submissions in lieu at [17].

given they do not have any direct meaning in relation to the goods and services at issue".²⁴ The Applicant did not file specific submissions on this point. I find the same reasoning outlined at paragraph [6463] applies. Overall, the DREAM COACH mark has a medium degree of inherent distinctive character.

65. Turning to the question of whether the inherent distinctiveness of the Earlier Marks has been enhanced through use, the Opponent submits that the Earlier Marks enjoy an enhanced degree of distinctive character as a result of the use made of the marks for many years as demonstrated by the evidence provided.²⁵

66. The Opponent provided evidence of use exclusively for the DREAMS mark. As stated at paragraph [12], I proceeded on the assumption that the evidence of use is sufficient to show use of the DREAMS mark for all the goods and services for which it is registered. Nonetheless, I must look at the evidence to determine whether the use that has been made of the DREAMS mark also warrants a finding of enhanced distinctiveness for the goods at hand.

67. Mr McAleer states that the Opponent has been active since 1985 and is one of the UK's leading manufacturers and retailers of bedroom furniture, beds, mattresses and bedding. It currently employs around 2,300 people across the UK and sells approximately 14,000 mattresses, bases and headboards each week to customers nationwide through a network of 208 stores and its website. In relation to the latter, Mr McAleer's evidence shows that, between June 2021 and June 2025, the website "dreams.co.uk" received around 1.7 million monthly visits globally, with the majority (around 80%) originating from the UK. The Opponent won the "National Bed Retailer of the Year" award in 2019, 2021, 2022 and 2023, and was a finalist for the same award in 2024. The mark has also been used in advertising communications highlighting the Opponent's sponsorship of Team GB for the Olympic and Paralympic Games in Tokyo 2021 and Paris 2024. Mr McAleer further indicates that, between December 2018 and December 2023, the annual turnover attributable to the DREAMS brand averaged approximately £353 million, reaching almost £400 million in the year December 2022/December 2023.

²⁴ Opponent's submissions in lieu at [33].

²⁵ Statement of grounds at [6].

68. The evidence presents some gaps such as lack of marketing expenditure, market position, the social media evidence does not clearly refer to the UK and some evidence is undated. Furthermore, it is unclear whether the revenues refer exclusively to the UK or are global figures. Nonetheless, looking at the evidence as a whole, I find that the DREAMS mark's distinctiveness, in relation to beds, mattresses, pillows, bedding, and bedroom furniture, has been enhanced by way of the use made of it. However, given the mark's fairly low (between low and medium) level of inherent distinctiveness, as outlined at paragraph [62], I find that the mark's distinctiveness has been enhanced to no more than a medium degree.
69. With regard to those goods that have no connection to sleeping (e.g., bedroom textile fabrics or coverings for furniture) the Opponent did not provide any evidence of use for these types of goods. Hence, I do not find that the use made of the DREAMS mark is such as to have enhanced its distinctiveness for these goods. In the event I am mistaken, and part of the evidence refers to these goods, I nonetheless find that the evidence is insufficient to enhance the mark's distinctiveness for these goods. For these goods the DREAMS mark maintains a medium degree of inherent distinctiveness.

Likelihood of confusion

70. There is no simple formula for determining whether there is a likelihood of confusion. The factors considered above have a degree of interdependency (*Canon* at [17]). I must make a global assessment of the competing factors (*Sabel* at [22]), considering the various factors from the perspective of the average consumer and deciding whether the average consumer is likely to be confused. In making my assessment, I must keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).
71. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other (*L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10).
72. I have already elected to proceed by considering the likelihood of confusion where the marks are used in relation to identical goods. The DREAMS mark has a

medium inherent distinctiveness for those goods that have no connection to sleeping (e.g., bedroom textile fabrics and coverings for furniture) and its distinctiveness has been enhanced to no more than medium through use for goods relating to sleeping such as beds, mattresses, pillows, bedding and bedroom furniture. The DREAM BIGGER and the DREAM COACH marks have a medium degree of inherent distinctiveness for all the registered goods at hand.

73. The relevant consumer is the general public, and it is likely to pay a below-medium level of attention when purchasing those cheaper goods such as bedding or furniture covers whereas it will pay a medium degree of attention for more expensive and infrequent purchases such as for mattresses or bedroom furniture.

74. I found the visual and aural similarity to be medium between the DREAMS mark and the Contested Mark and below medium for the DREAM COACH and the DREAM BIGGER marks. All the Earlier Marks are conceptually dissimilar from the Contested Mark or, alternatively, they have a very low degree of similarity. The purchasing process of the contested goods is considered to be mainly visual but the potential for aural use also bears some relevance.

75. I acknowledge that DREAMS, DREAM COACH, DREAM BIGGER and DREAMCATCHER share the word “DREAM-”, however, the Contested Mark consists of a composite word that the relevant consumers will view as the ordinary English dictionary word to identify a charm consisting of a typically wooden or leather hoop with a webbed centre of threads decorated with feathers, beads, etc. That is, they will understand the mark as a different word (with a different meaning or with a very low overlap in meaning) from anything that conveys a meaning relating to “dream” (i.e., either as a verb or the plural form of “dream”). This is even more true in the DREAM COACH and the DREAM BIGGER marks where the addition of “COACH” and “BIGGER” create a further visual and aural difference (along with a conceptual dissimilarity or very low similarity).

76. Therefore, it is my view that, despite the similarity between all the competing marks created by the commonality of the word “DREAM-”, the relevant consumers will perceive the presence of “DREAM” in the Contested Mark in its normal dictionary sense as part of a different English dictionary word (with a different meaning or very low conceptual similarity) and it is highly unlikely that the competing marks will

be mistaken or misremembered for one another. Rather, the aforementioned differences, especially the conceptual dissimilarity (or very low conceptual similarity), will counteract the visual and aural similarities and they will be sufficient to enable consumers to differentiate between them. In my judgement, taking all the above factors into account and the respective marks' overall impression, the differences between the competing trade marks are likely to enable consumers, paying a medium level of attention, to avoid mistaking the marks for one another, even when factoring in the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion. I reach this conclusion even bearing in mind the enhanced distinctiveness to medium for the DREAMS mark as well as that consumers will pay a below-medium degree of attention for cheaper goods such as bedding and furniture covers.

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

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental 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)".

77. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal.²⁶ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.²⁷ The Court of Appeal has also emphasised that, where there is no direct confusion, there must be a "proper basis" for finding indirect confusion.²⁸

78. The Applicant argues that *"despite the fact that the Application does cover certain goods that would be considered identical/similar to the goods protected under the Earlier Marks, the differences between the trade marks means that the average consumer will not mistake the Application for the Earlier Marks. The differences between the trade marks will also mean that the average consumer will not believe that the use of the Application means that the Applicant is connected, or associated, with the Opponent's business. Even if the Earlier Marks are brought to mind by the Application, mere association in the minds of consumers will not be sufficient for a finding of confusion"*.²⁹

²⁶ *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207.

²⁷ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17.

²⁸ *Liverpool Gin Distillery*.

²⁹ Applicant's submissions in lieu at [21].

79. The Opponent contends that “[...] *house brands can be used in plural or singular form (as the Opponent’s DREAM BIGGER and DREAM COACH marks show, being singular variations of the Opponent’s pluralised DREAMS mark) and that consumers would likely see the DREAMCATCHER mark as a sub-brand, or brand extension deriving from the DREAMS brand, much like they do with DREAM BIGGER and DREAM COACH, and believe that the marks originate from the same or economically linked undertakings*”.³⁰

80. The Opponent directs me to prior decisions of the Tribunal where a likelihood of confusion (direct, indirect or both) was found between the Earlier Marks and other contested marks containing either “Dream” or “Dreams”.³¹ Notwithstanding the fact that I am not bound by previous decisions of the Tribunal, I also note that all the cases cited by the Opponent concern different marks from the Contested Mark under consideration. Therefore, I do not see how the reasonings outlined in these decisions could inform my assessment in the proceedings at hand.

81. The Opponent also directs me to a prior decision of mine where I found that the relevant consumers would perceive the figurative mark “HiDream” as a sub-brand of the “DREAMS” house mark.³² I do not find the same reasoning applies to the case at hand. In line with my assessment of the Contested Mark’s overall impression outlined at paragraph [36], the mark’s overall impression lies in the mark as a whole. I find little reason for the consumers, upon noticing the Contested Mark as the combination of “DREAM” and “CATCHER”, to consider the addition of “CATCHER” to the house brand mark “DREAMS”, used in singular form, to create a dictionary word with a different meaning, as an intentional step taken by the same undertaking; I do not consider it would form a proper basis for a finding of indirect confusion between the marks.

82. The same reasoning applies even more so for the DREAM COACH and the DREAM BIGGER marks. I do not see how the relevant consumers, noticing the removal of the word “COACH” and “BIGGER” and the conjoining of “DREAM” and “CATCHER” to create a dictionary word with a different meaning from any of the earlier marks, would perceive such changes as an intentional step taken by the

³⁰ Opponent’s submissions in lieu at [8].

³¹ BL O/0218/25; BL O/1127/23; BL O/1023/23; BL O/323/20; BL O/731/18.

³² BL O/0879/25.

Opponent to create a sub-brand or a brand extension of either the DREAM COACH or the DREAM BIGGER mark. Therefore, I find that no indirect confusion is likely to occur for any of the Earlier Marks.

83. Having reached that conclusion in respect of identical goods (on the assumption that genuine use of the Opponent's goods and services had been proven), the Opponent would be in an inferior position were I to assess the likelihood of confusion based on similar goods and/or services. Therefore, it follows that there is no likelihood of confusion (both direct and indirect) for the remaining goods and services at hand.

CONCLUSION

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

85. The Applicant has been successful. Subject to any successful appeal, the Application by Dacks Holdings Limited may proceed to registration.

COSTS

86. The Applicant is entitled to an award of costs. The relevant scale is contained in Tribunal Practice Notice ("TPN") 1/2023. Bearing that scale in mind, I award costs to the Applicant as follows:

Considering the notice of opposition and preparing the counterstatement	£250
Submissions in lieu of a hearing	£350
Total:	£600

87. I order Dreams Limited to pay Dacks Holdings Limited the sum of **£600**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case, if any appeal against the decision is unsuccessful.

Dated this 25th day of June 2026

Andrea Rossi

For the Registrar

Annex 1

Goods and services relied on for registration no. UK00917963494 and registration no. UK00003849391

Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.

Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; covers for hot water bottles; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.

Class 35: Retail services relating to the sale of furniture, bedroom furniture, mirrors, beds, water beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles; Retail services relating to the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, bed clothes, covers for duvets, mattress covers, covers for pillows and pillow cases, covers for cushions, bedspreads, covers for hot water bottles, pyjama cases, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods; all the aforesaid provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

Annex 2

Goods and services relied on for registration no. UK00918169119

- Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.
- Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.
- Class 35: Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding

superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.

Annex 3

Goods and services relied on for registration no. UK00003453941

- Class 20: Furniture; bedroom furniture; mirrors; beds; water beds; divans; bedsteads; headboards; bedding, other than bed linen; pillows; mattresses; open spring and pocket spring mattresses; memory foam and latex mattresses; futons; air cushions and air pillows; air mattresses; bed casters not of metal; bed fittings not of metal; chairs; armchairs; cabinets; chests of drawers; desks; footstools; cots and cradles; parts and fittings for all the aforesaid goods.
- Class 24: Textiles; fabrics and textiles for beds and furniture; bed linen; duvets; bed covers; bed blankets, bed clothes; covers for duvets; mattress covers; covers for pillows and pillow cases; covers for cushions; bedspreads; furniture coverings of textile; quilts; parts and fittings for all the aforesaid goods.
- Class 35: Retail services connected with the sale of furniture, bedroom furniture, beds, water beds, sofa beds, divans, bedsteads, headboards, bedding, pillows, mattresses, open spring and pocket spring mattresses, memory foam and latex mattresses, futons, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of air cushions and air pillows, air mattresses, sleeping bags, bed casters not of metal, bed fittings not of metal, chairs, armchairs, cabinets, chests of drawers, desks, footstools, cots and cradles, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of textiles, fabrics and textiles for beds and furniture, bed linen, duvets, bed covers, bed blankets, covers for duvets, mattress covers, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding

superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; retail services connected with the sale of covers for pillows and pillow cases, covers for cushions, bedspreads, furniture coverings of textile, eiderdowns, quilts, parts and fittings for all the aforesaid goods, all provided in a retail furniture and bedding superstore, online via the Internet or other interactive electronic platforms, via mail order or catalogues or by means of telecommunications; information, advisory and consultancy services relating to all of the aforesaid.