

BL O/0530/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3782665

BY

NAMASTE DELHI LTD

TO REGISTER THE FOLLOWING TRADE MARK



IN CLASS 43

AND OPPOSITION THERETO UNDER NUMBER 437763

BY

MR RASHPAL SINGH

AND

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON

BY NAMASTE DELHI LTD

AGAINST A DECISION OF LEISA DAVIES (O/1119/25)

DATED 27 NOVEMBER 2025

DECISION

Introduction

1. This is an appeal from a decision of Leisa Davies acting for the Registrar dated 27 November 2025 (“**the Decision**”) in relation to opposition proceedings brought by Mr Rashpal Singh (“**the Respondent**”) regarding UK trade mark application no. 3782665 for the mark shown above (“**the Appellant’s Mark**”). The Appellant’s Mark was applied for in class 43 for various restaurant services.
2. The Respondent opposed the application based on sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“**the Act**”) against all the services covered by the Appellant’s Mark. Under s.5(2)(b), the Respondent relied on the two UK trade mark set out below registrations (“**the Earlier Marks**”):

- (i) UK TM no. 3601333 (“**the First Earlier Mark**”)

NAMASTE

Filed on 26 February 2021 and registered on 26 November 2021 for:

Class 39: Food delivery services; Delivery of food and drink prepared for consumption.

Class 43: Restaurants; Restaurant services; Restaurant information services; Self-service restaurants; Fast food restaurants; Take-out restaurant services; Restaurant and bar services; Providing reviews of restaurants and bars; Provision of food and drink in restaurants; Making reservations and bookings for restaurants and meals; Cafés; Cafeterias; Catering; Outside catering services; Business catering services; Food and drink catering; Consultancy services in the field of food and drink catering; Take-away fast food services; Preparation of food and drink; Provision of food and drink; Advice concerning cooking recipes.

(ii) UKTM no. 3313346 (“**the Second Earlier Mark**”)

DELHI DARBAR

Filed on 25 May 2018 and registered on 28 September 2018 for:

Class 39: Food delivery services; Delivery of food by restaurants.

Class 43: Indian restaurant services; Bar and restaurant services; Provision of food and drink in restaurants; Restaurant services; Restaurant services incorporating licensed bar facilities; Restaurants; Catering services; Takeaway food services; Takeaway services.

3. As the Earlier Marks completed their registration processes less than five years before the date on which the application for the Appellant’s Mark was made, the Respondent did not have to prove genuine use of the Earlier Marks.
4. Under section 5(4)(a), the Respondent relied on his use of the sign “namaste by DELHI DARBAR” in Glasgow, Scotland since 1990 for the provision of food and drink via restaurants services.
5. Both parties filed evidence during the evidence rounds. At the hearing before the Hearing Officer, the Respondent was represented by Harper Macleod LLP while the Appellant represented itself through Mr Rajesh Kumar.

The Hearing Officer’s Decision

6. The Hearing Officer found all of the services of the Appellant’s Mark to be identical to those covered by the First Earlier Mark, and either identical or similar to a medium degree to the services covered by the Second Earlier Mark. The average consumer would be a member of the general public, paying a medium degree of attention. The purchasing process would be predominantly visual, without discounting aural considerations.
7. The Hearing Officer found that the words NAMASTE DELHI had the greater impact in the Appellant’s Mark, with the word NAMASTE playing the greater role given the non-distinctiveness of the word DELHI, being perceived as a geographical location. The First Earlier Mark was found to be visually and aurally similar to a medium degree to the Appellant’s Mark, conceptually similar to between a medium and high degree, and inherently distinctive to a medium degree. The Second Earlier Mark was found to be visually and aurally similar to a low degree to the Appellant’s Mark, conceptually similar to

a low degree, but inherently distinctive to a high degree. Neither of the Earlier Marks' distinctiveness had been enhanced through use.

8. The Hearing Officer concluded that there was no likelihood of confusion between the Appellant's Mark and the Second Earlier Mark because the differences between the marks were too great. No consumer was likely to consider that a restaurant providing Indian food was likely to be the only undertaking using the word DELHI, which was the only common element between the marks.
9. However, the Hearing Officer concluded that there was a likelihood of direct confusion between the Appellant's Mark and the First Earlier Mark in respect of all of the services applied for because consumers would misremember or imperfectly recall one for the other. Consumers would focus on the word NAMASTE in each mark.
10. The Hearing Officer also concluded that there was a likelihood of indirect confusion between the Appellant's Mark and the First Earlier Mark in respect of all of the services applied for. This was because the Appellant's Mark would be regarded as a more stylised version of the First Earlier Mark and the differences would be put down to an alternative mark being used by the same or a related undertaking.
11. The Opposition failed under s.5(4)(a).

The Appeal

12. The Appellant filed a Notice of Appeal to the Appointed Person under s.76 of the Act. At the hearing before me, the Appellant again represented itself through Mr Rajesh Kumar and the Respondent was represented by Mr Jamie Watt of Harper Macleod LLP.

Standard of Review

13. It is well established that, in order to interfere with the decision of the Hearing Officer, I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong. The relevant principles were set out in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) at [24]. An appeal is by way of review, not a rehearing. Neither surprise at a Hearing Officer's conclusion nor a belief that she or he has reached the wrong decision will justify interference. The decision of the lower court will be "*wrong*" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. In the absence of an error of law, the appellate court would

be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "*outside the bounds within which reasonable disagreement is possible*" (*Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 at [80]). In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education v Pie Corbett Consultancy* [2017] RPC 17 at [52(iv)], *REEF Trade Mark* [2003] RPC 5 at [28] and *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11 at [50]-[51]).

14. In the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, Arnold LJ said at [110]:

"It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable: Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2](v) (Lewison LJ)."

15. The Supreme Court recently restated the approach to appeals of this kind in its judgment in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at [94] to [95] as follows:

"94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:

- (i) *The trial is not a dress rehearsal. It is the first and last night of the show.*
- (ii) *Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.*
- (iii) *In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

*"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.*

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation."

16. I have borne those principles firmly in mind.

Grounds of Appeal

17. The Appellant's Grounds of Appeal set out four grounds against the decision under s.5(2)(b) of the Act in respect of the First Earlier Mark. The Respondent filed a Respondent's Notice, but no cross-appeal was brought against the decision under s.5(2)(b) of the Act in respect of the Second Earlier Mark or under s.5(4)(a) of the Act. I will consider each of the grounds of appeal in turn.

Ground 1: Overstating the inherent distinctiveness of the word NAMASTE

18. The Appellant argued that the Hearing Officer's conclusion that the First Earlier Mark was inherently distinctive to a medium degree was *"inconsistent with the Hearing Officer's own acceptance that "namaste" is a commonly understood greeting and widely encountered in cultural and hospitality contexts"*. The Appellant submitted that *"a term that is commonly understood and widely used cannot, as a matter of principle, possess more than weak inherent distinctiveness."*

19. The key issue here is to consider the mark in light of the services for which it has been registered. For example, a mark may lack distinctiveness in relation to certain goods or services that are closely related to the conceptual meaning of the mark, but may be distinctive when the conceptual meaning of the mark bears no relation to the goods or services covered by it. I do not agree with the Appellant's assertion that the Hearing Officer found that the word 'namaste' was "*widely encountered in cultural and hospitality contexts*". In fact, she stated at paragraph 52 of the Decision:

*"The first earlier mark is for the word NAMASTE which will be seen as an Indian greeting. Whilst not an English dictionary word I nevertheless consider that it is commonly used in the UK as a greeting often used in yoga classes for example and its meaning will be known to a substantial portion of the relevant public. **Nevertheless, the word is not descriptive or allusive of the services on offer** and so I consider that it is inherently distinctive to an average (medium degree)."* (emphasis added)

20. It is therefore clear that the Hearing Officer considered the distinctiveness of the First Earlier Mark in the context of the food and drink-related services for which it was registered, which have no obvious connections with a word which would be seen as a greeting, and therefore did not make any error of principle when concluding that the First Earlier Mark was inherently distinctive to a medium degree.

21. Accordingly, the appeal fails under the first ground.

Ground 2: Failure to assess the mark as a whole

22. The Appellant submitted that the Hearing Officer failed to carry out a proper global assessment of the Appellant's Mark, but instead isolated the NAMASTE element as dominant and treated the DELHI element as negligible. In particular, the Appellant argued that geographical terms were commonly used in the context of restaurant branding to convey identity, theme or differentiation, and are relied upon by consumers to distinguish between undertakings.

23. The Hearing Officer correctly identified the applicable law regarding the assessment of the likelihood of confusion in paragraph 22 of the Decision, including in particular that the likelihood of confusion must be appreciated globally, and that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. However, she also correctly included the following subclauses in her summary of these principles:

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

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

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;”

24. In paragraph 41 of the Decision, the Hearing Officer considered all of the respective elements of the Appellant’s Mark, and concluded that *“it is the words NAMASTE DELHI that have the greater impact in the mark and in which the overall impression resides.”* I did not understand the Appellant to be challenging that conclusion – for example, the Appellant described the Appellant’s Mark as a *“two-word sign”* in its Grounds of Appeal. The Hearing Officer went on to state that the word NAMASTE *“plays the greater role given the non-distinctiveness of the word DELHI being perceived as a geographical location, namely a city in India”*. There was an association between the overall mark and Indian food, given that the mark included the words “CONTEMPORARY INDIAN CUISINE” in a smaller font beneath the words “NAMASTE DELHI”. Since Delhi is a well-known Indian city, I do not consider it unreasonable for the Hearing Officer to have concluded that the word DELHI in the Appellant’s Mark would be perceived by the average consumer as lacking distinctiveness when forming part of a mark which would be registered in respect of restaurant services. Since the Hearing Officer had found that the word NAMASTE did not have the same connection with restaurant services, and given that it is the first word in the Appellant’s Mark, the Hearing Officer was entitled to rely on *“accepted case law that the beginning of marks have more impact”* and that the word NAMASTE *“was the more dominant element”*. In reaching her conclusion that there was a likelihood of direct confusion between the Appellant’s Mark and the First Earlier Mark, she did not *“dissect the mark”* but did consider the overall impression of the marks as a whole. Indeed, she expressly stated in paragraph 61 of the Decision, where she reached that conclusion:

“Taking all the global factors identified above into account and my findings as set out earlier in my decision, I consider that it is likely that consumers will misremember or imperfectly recall the marks one for the other.” (emphasis added)

25. The Appellant has therefore failed to identify any errors made by the Hearing Officer under Ground 2.

Ground 3: Misapplication of indirect confusion

26. The Appellant challenged the Hearing Officer's finding of indirect confusion, on the basis that she had found that the Opponent had failed to establish goodwill for the purposes of the s.5(4)(a) ground, so there was no proper basis for her to infer that consumers would assume a commercial connection between the two marks, and that her decision rested on speculation rather than evidence.
27. The Hearing Officer set out her conclusion on indirect confusion in paragraph 62 of the Decision as follows:

"However, if I am wrong and those differences between the particular presentational elements and the additional words, are noticed, I still believe that confusion will arise. This is because those differences in the contested mark in my view will be regarded as a more stylised version and the differences put down to an alternative mark being used by the same or related undertaking. The figurative mark being used on signage and menus as opposed to the word only mark used in plain text, for example. The word NAMASTE will be considered by consumers as the indicator of origin such that the stylistic differences and the additional low and non distinctive/descriptive elements will be attributed to the use by the same or related undertaking in different contexts. I find there would be a likelihood of indirect confusion. These findings apply equally either way even if the assessment were based on a lower degree of aural similarity where all of the contested mark's verbal elements were articulated."

28. As the Hearing Officer pointed out in paragraphs 61 and 64 of the Decision, on this issue she was required to take into account the Opponent's notional use of how the First Earlier Mark could be used in respect of the services for which it was registered. Accordingly, whether or not the Opponent had been able to produce sufficient evidence to persuade the Hearing Officer that it owned goodwill in its mark was irrelevant (in fact, it was the mark "namaste by DELHI DARBAR" that the Opponent was seeking to establish evidence of a goodwill in).
29. The Hearing Officer set out in paragraphs 57 and 58 of the Decision the applicable law relating to indirect confusion. Her reasoning set out in paragraph 62 leading to her conclusion that consumers would put the differences between the Appellant's Mark and the First Earlier Mark down to the Appellant's Mark being an alternative mark being used by the same or a related undertaking do not demonstrate that she erred in any way.
30. The appeal under Ground 3 therefore fails.

Ground 4: Failure to give weight to a crowded field

31. The Appellant submitted that the Hearing Officer failed to take sufficient account of evidence showing “widespread use of “NAMASTE” by multiple traders in the hospitality sector”, which “materially limits the distinctive scope of any single mark and reduces the likelihood that consumers would assume a single trade source”.
32. The Appellant’s evidence consisted of a list of 27 restaurant companies whose name started with NAMASTE. The Hearing Officer said this in respect of that evidence:

“63. Whilst Mr Kumar filed evidence listing a number of companies using the word NAMASTE in the title of their company name, I do not consider that this evidence was sufficient to show that the distinctiveness of the word NAMASTE has been weakened. The screenshots produced relating to the use of the words NAMASTE for restaurants were undated and therefore these do not assist the Applicant. There was also insufficient evidence that gives any indication as to how these respective companies were referred to by way of signs or how they were effectively used in the market prior to the relevant date or the extent to which UK consumers were exposed to them as at the relevant date.”

33. These were valid criticisms of the Appellant’s evidence and why it was insufficient to enable the Hearing Officer to conclude that there were a sufficient number of other restaurants in the market at the relevant time using NAMASTE as part of their name such that it would have an effect on the likelihood of confusion with the First Earlier Mark. Her treatment of this evidence does not demonstrate that she made any error.

34. The appeal therefore fails under Ground 4.

Conclusion

35. The appeal has failed for the reasons set out above.

Costs

36. Since the Appellant has been unsuccessful, the Respondent is entitled to a payment towards its costs of successfully defending the appeal. However, I do not accept the Respondent’s request to award off-the-scale costs on the basis that the Appellant’s conduct has caused unnecessary expense. The Appellant was entitled to bring the appeal and to run the arguments which were made before me, even though they have been unsuccessful. I therefore order the Appellant to pay to the Respondent the sum of £1,200 in respect of the appeal. This sum is in addition to the £1,350 that the Appellant was ordered to pay to the Respondent by the Hearing Officer, so that the Appellant is

ordered to pay the total sum of £2,550 to the Respondent within 21 days of the date of this decision.

Simon Clark
The Appointed Person
24 June 2026