

O/0537/26

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO UK4093235
BY TIGERLYFE IP LLC TO REGISTER:**

TIGERLYFE

FOR GOODS IN CLASSES 32 & 33

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO 451248
BY JEFFREY JOSHUA LAWRENCE**

BACKGROUND AND PLEADINGS

1. Tigerlyfe IP LLC (the applicant) applied to register the trade mark on the cover page of this decision in the UK on 29 August 2024. The application was accepted and published in the Trade Marks Manual on 13 September 2024 in respect of the following goods:

Class 32: Energy drinks; Energy drinks enhanced with vitamins, minerals, nutrients; Non-alcoholic drinks, namely, energy shots; Sports drinks, namely, energy drinks.

Class 33: Spirits; vodka.

2. On 9 December 2024, Jeffrey Joshua Lawrence (the opponent) partially opposed the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (the Act). The opposition is directed against some of the goods in the application, namely:

Class 33: Spirits; vodka.

3. The opponent relies upon the following marks:

TIGER GIN

UK3035040

Filing date: 16 December 2013; date of entry in register: 14 August 2015.

Relying on all its goods, namely:

Class 33: Gin.

TIGER VODKA

UK3174628

Filing date: 14 July 2016; date of entry in register: 9 December 2016.

Relying on all its goods, namely:

Class 33: Alcoholic beverages (except beers);alcoholic cocktails; beverages (alcoholic -), except beer; cocktails; spirits and liqueurs; spirits [beverages]; vodka.

Tiger Whisky

Tiger Whiskey

(series of two)

UK3452277

Filing date 17 December 2019; date of entry in register: 13 March 2020.

Relying on all its goods, namely:

Class 33: Whisky; Whiskey [whisky].

TIGER SPIRITS

UK3140526

Filing date 14 December 2015; Date of entry in register: 25 March 2016.

Relying on all its goods, namely:

Class 33: Spirits.¹

4. By virtue of their earlier filing dates, the marks relied upon constitute earlier marks within the meaning of section 6 of the Act. As mark UK3452277 was registered less than five years before the filing date of the contested mark, it is not subject to proof of use pursuant to section 6A of the Act. The remaining marks, namely UK3140526, UK3035040 and UK3174628, were registered more than five years before the relevant date and would ordinarily be subject to proof of use. However, as the applicant did not put the opponent to proof of use in its TM8, the opponent is entitled to rely upon all the marks without demonstrating use in the relevant period.

5. The opponent argues that the respective goods are identical or similar and that the marks are similar. The opponent submits that due to these factors there is a likelihood of confusion between the marks, which includes a likelihood of association.

6. The applicant filed a defence and counterstatement denying the claims.

¹ Although the mark relied upon, as set out in the TM7, is recorded on the Trade Mark Register as expired, this reflects only that it was not renewed within the prescribed period. As the mark was validly registered and in force at the filing date of the contested mark, the opponent is entitled to rely upon it.

7. The opponent filed evidence in chief. The applicant did not file evidence, but filed submissions, dated 19 July 2025, during the evidence rounds. The opponent did not file No evidence in reply. No hearing was requested, and neither party filed submissions in lieu of a hearing.

8. The opponent is represented by his business consultant, Angela Woolford, and the applicant is professionally represented by Trademarkia P.C.

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

EVIDENCE AND SUBMISSIONS

10. The opponent filed evidence in chief in the form of a witness statement by Ms Angela Woolford, dated 24 May 2025. Ms Woolford, a business consultant, exhibits 14 documents (AW-TGTL1 to AW-TGTL14). I have considered all the evidence and submissions filed and will refer to them where necessary.

11. The applicant filed submissions in the evidence rounds, dated 19 July 2025.

12. I do not propose to summarise the evidence or submissions further at this stage. However, all have been taken into account in reaching my decision and will be referred to, where appropriate, and to the extent that I consider necessary.

PROCEDURAL ISSUE

13. The opponent undertook research into the applicant's representative and has argued that the address provided by the applicant is not an acceptable address for service. This argument was made on the basis of the following factors:

- It is alleged that the applicant's address is not a permanent place of business but a serviced office operating on a 'hot desk' basis.

- Searches relating to the applicant's representative indicate that the representative is based in the USA and uses "a foreign mobile number of unknown origin."
- The opponent further submits that the representative's website indicates that the named representative, from whom correspondence has been received, is based in Poland.²

14. I note the guidance in relation to a valid address for service outlined below:

"An address for service is an address at which you can receive correspondence from the Intellectual Property Office (IPO) or third parties regarding your application or registered right. This address will also be used to send documents related to intellectual property proceedings.

It can be any address with which you or your business is associated. For example, it can be your home or business address. If you appoint a representative, their address will then be used as the address for service for all correspondence. Whilst it is possible to provide a virtual office or a PO Box address, it still must be a valid address where notices or letters can be delivered and read by the intended recipient.

An address for service must be an address in the UK, Gibraltar or the Channel Islands. We also accept the Isle of Man as a valid address for service."³

15. The requirement is for a valid address for service within the United Kingdom (or Gibraltar or the Channel Islands). The address provided by the applicant's representative has been used to receive correspondence and documents from the UKIPO in these proceedings. The relevant guidance permits the use of virtual addresses and PO boxes; accordingly, the opponent's submissions as to the representative's location and contact number are not relevant. The address provided is associated with the applicant's representative and has functioned effectively for service in these proceedings. I am therefore satisfied that the requirements for a valid address for service have been met and I need say no more on this point.

MY APPROACH

² Witness statement of Ms Angela Woolford paragraphs 3-4 and exhibits AW-TGTL1 and 2

³ Address for service for intellectual property rights - GOV.UK accessed 5/6/2026
www.gov.uk/guidance/address-for-service-for-intellectual-property-rights

16. The opponent stated in its witness statement that it relies primarily on mark UK3035040, 'TIGER GIN', and has directed the majority of its evidence towards that mark.⁴ Accordingly, I will assess the opposition on that basis with reliance placed only on that mark, and, if necessary, return to the remaining marks.

DECISION

Section 5(2)(b)

17. 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”.

18. 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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;

⁴ Witness Statement of Ms Angela Woolford, paragraph 10

- c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a 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 THE GOODS

The applicant's goods	The opponent's goods
Class 33: Spirits; vodka.	Class 33: Gin

19. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the General Court (GC) stated:

“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 the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark”

20. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“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.”

21. Case law has described “complementary” as meaning that “... *there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking.*”⁵

22. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

⁵ *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06.

- (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.

23. “Vodka” in the applicant’s specification is similar to “Gin” in the opponent’s specification. Gin is a spirit that is made by the process of distillation. It tends to have a similar ‘alcohol by volume’ content to that of ‘vodka’ and is likely to be stocked in fairly close proximity in a retail establishment, accordingly there will be an overlap in trade channels. The goods overlap in purpose, nature, method of use and users. There is also a degree of competition between the goods as the average consumer may select one over the other for the same purpose. The goods are not complementary. Taking all of the above into account, I find that the goods are highly similar.

24. “Spirits” in the applicant’s specification encompasses the term “Gin” that appears in the opponent’s specification and; accordingly, the goods are identical on the principle outlined in *Meric*.

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

25. 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

26. 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;
- (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.

27. The average consumer for the goods will be adult members of the general public over the age of 18.

28. The cost of the goods in question is likely to vary, however, on balance it is likely to be relatively low. The majority of the goods will be purchased relatively frequently. The average consumer will take various factors into consideration such as the origin of the goods, cost, flavour, ingredients and alcohol percentage. It is my view that a medium degree of attention will be paid during the purchasing process.

29. The goods are likely to be purchased by self-selection from the shelves of retail outlets such as supermarkets and off-licences, and their online equivalents. They are also sold in bars and restaurants, being displayed behind the counter and/or listed on menus. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an aural component to the purchase given that the goods could be verbally ordered at a table or bar, or if stocked behind a counter, the average consumer may have to ask the sales assistant for them.

COMPARISON OF THE MARKS

30. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo* 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.”

31. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

32. The opponent has referred me to the first instance decisions O/1214/24 and O/527/21 in support of its submissions on the comparison of the marks and asserting similarities

between those cases and the present proceedings. While I have considered those decisions, I am not bound by the findings of other Hearing Officers.

33. The marks to be compared are as follows:

The applicant's mark	The opponent's mark
TIGERLYFE	TIGER GIN

34. The applicant's mark is a word mark that consists of 'TIGERLYFE'. I remind myself of the case of *Usinor SA v OHIM*,⁶ where the General Court found that whilst the average consumer usually perceives a mark as a whole and does not proceed to analyse its various details he will, perceiving a verbal sign, break it down into verbal elements, which, for him, suggest a concrete meaning or which resemble words known to him. Accordingly, I consider that this mark will be understood as the conjoining together of the two words 'TIGER' and 'LYFE', the latter being understood as a misspelling of the word 'LIFE'. There are no other elements that contribute to the overall impression of the mark, which lies in the conjoined word itself.

35. The opponent's mark is a word mark 'TIGER GIN'. Whilst I appreciate that 'TIGER GIN' may, in some instances, form a unit (that I will come to discuss further below), I consider that, in the context of the goods at issue, 'GIN' will be seen as descriptive. The average consumer may even fail to perceive GIN as an intentional part of the brand name and will therefore pay less attention to it. It will, therefore, play a lesser role in the overall impression of the opponent's mark, with 'TIGER' playing a greater role.

36. As plain word marks, the marks are protected in whichever form, colour and typeface they are used in.⁷

37. Visually, the applicant's mark consists of a single word, whereas the opponent's mark comprises two words. The marks share the letters 'TIGER' but differ in their respective endings, namely 'LYFE' and 'GIN'. Taking these similarities and differences into account, I find the marks to be visually similar to a medium to high degree.

⁶ Case T-189/05

⁷ *La Superquímica v EUIPO*, Case T-24/17, paragraph 39.

38. Aurally, the applicant's mark consists of three syllables, which I consider will be pronounced as TY-GER-LYFE. The opponent's mark consists of four syllables and will be pronounced in the ordinary way. The first two syllables in both marks are identical, whilst the remaining syllables differ. In these circumstances, I am reminded of the case of *ENRICH LEARNING*, BL O/1141/25⁸ where the appointed person found that aspects of marks may not be verbalised when those parts are descriptive – accordingly, there is a possibility that the average consumer may shorten the opponent's mark to TIGER and omit the word GIN. Taking these factors into account, I find the marks to be aurally similar to a medium to high degree.

39. Conceptually, above I alluded to the fact that in some circumstances 'TIGER GIN' may be seen as a unit. However, in the context of the goods at issue, 'GIN' will be viewed as a reference to the spirit. As such, the opponent's mark will not have a unitary meaning. Instead, when it is viewed in combination, the meaning of 'TIGER GIN' will be attributed to the individual words themselves. 'TIGER' will be attributed its ordinary meaning as a reference to a large wild cat and 'GIN', as above, will refer to the alcoholic spirit.

40. The element 'TIGER' will convey the same concept as identified above. The opponent submits that 'LYFE' does not have any obvious or apparent meaning, either generally or in relation to the goods at issue.⁹ They provided evidence in the form of a search of the Cambridge English Dictionary to demonstrate that it is not an ordinary dictionary word.¹⁰ Whilst I agree that it is not an ordinary dictionary word, as mentioned previously, 'LYFE' will be viewed as a misspelling of the ordinary word 'LIFE', meaning the *"period between birth and death or the experience or state of being alive"*.¹¹ In the context of the alcoholic goods, I do not consider that 'LIFE' will carry any obvious concept. The meaning of the words is not dependent on each other. In comparing these concepts, I am of the view that the shared reference to a 'TIGER' will result in the marks being conceptually similar to a medium degree.

DISTINCTIVE CHARACTER OF THE EARLIER MARK

41. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of

⁸ Paragraphs 16-18.

⁹ Witness statement of Angela Woolford, paragraph 14

¹⁰ Exhibit AW-TGTL4

¹¹ <https://dictionary.cambridge.org/dictionary/English/life> 3/6/2026

the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

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

42. Registered trade marks possess varying degrees of inherent distinctive character. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion may be. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

43. I will consider the inherent distinctiveness of the opponent's word-only mark, on which this decision has proceeded, before considering whether its distinctive character has been enhanced through use. In my view, the distinctive character of the opponent's mark will derive from the word 'TIGER'. As this word is the common element between the marks, the distinctive character of the mark is of particular relevance. I remind myself of the case of *Kurt Geiger v A-List Corporate Limited*,¹² where Mr Iain Purvis, sitting as the appointed person, pointed out that the level of distinctive character is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. I consider that the distinctive character of the mark will reside in the word 'TIGER' because 'GIN' will be viewed as descriptive of the goods for which it is registered. Turning back to the word 'TIGER', I do not consider that it will be viewed as descriptive or allusive but neither do I consider a reference to an animal as something that is particularly remarkable from a trade mark perspective. It is my view that the degree of inherent distinctiveness associated with the word

¹² BL O-075-13

'TIGER' is, medium. As for the remaining element, I am of the view that while they will not be ignored outright, I do not consider that it will contribute to the mark to the point that they will increase its distinctiveness beyond that which is created by 'TIGER'.

44. The opponent submits that its mark has been put to significant use in trade, so I move on to consider whether the opponent's evidence establishes enhanced distinctive character of the opponent's mark through use, I note the following:

- The opponent has received 15 UK awards in respect of its Gin between 2016 and 2023, ranging from Gold awards to finalist position.¹³
- Social media extracts from Instagram, Twitter and Facebook relating to the opponent's GIN goods.¹⁴ The Instagram snapshots are dated 20 February 2020 with 72.4K followers and 1,137 posts and 4 September 2020 with 83.9K followers and 1,325 posts. The Twitter snapshots are dated 14 April 2017 demonstrating 18.1K followers and 4,420 tweets, 20 February 2017 demonstrating 90.7K followers and 4 September 2020 96K followers. The Facebook snapshots are dated July 2016 demonstrating 75K followers and 20 February 2020/4 September 2020 demonstrating over 1 million followers.
- Advertising in GQ¹⁵ magazine relating to the opponent's GIN goods appearing in April, May and June 2016, featuring the opponent's mark on its goods.

45. I have no evidence or submission from either party to assist me on the matter of the size of the UK market for the goods concerned. Furthermore, no evidence has been provided to demonstrate any amount of money that has been spent promoting the mark in the UK. No sales figures or invoices have been provided to demonstrate how intensive, wide spread or longstanding use of the mark has been. However, I do note that the opponent has had varying degrees of success at Gin awards in the UK between 2016 and 2023. I note that there is no evidence to allow me to determine the geographic scope of any sales throughout the UK. In relation to the social media evidence, whilst I am able to determine when the followers were gained, I am unable to determine the geographic location of the followers, as I have not been provided with the information to enable me to identify the location or reach of the visitors/followers of the social media pages. On the balance of all of the evidence, even taking into account the awards won in the UK, I consider that the evidence is insufficient to show that the distinctive character of the mark has been enhanced through use. Subsequently, the mark

¹³ Exhibit AW-TGTL6

¹⁴ Exhibit AW-TGTL12

¹⁵ Exhibit AW-TGTL13

continues to enjoy a medium degree of inherent distinctive character. Further, the inherent distinctiveness of the mark lies in TIGER and it is medium.

Family of marks

46. The opponent has argued that all of the earlier marks upon which it relies constitute a family of marks and that the average consumer would mistakenly assume the applicant's mark to be a part of that family of marks. I bear in mind the CJEU decision in *Il Ponte Finanziaria SpA v OHIM*¹⁶ in which it was held that:

“64. ... in order for there to be a likelihood that the public may be mistaken as to whether the trade mark applied for belongs to a ‘family’ or ‘series’, the earlier trade marks which are part of that ‘family’ or ‘series’ must be present on the market.

65. Thus, contrary to what the appellant maintains, the Court of First Instance did not require proof of use as such of the earlier trade marks but only of use of a sufficient number of them as to be capable of constituting a family or series of trade marks and therefore of demonstrating that such a family or series exists for the purposes of the assessment of the likelihood of confusion.”

47. Of the 4 earlier marks relied upon, only two, namely Tiger Gin and Tiger Vodka, appear in the opponent's evidence. There is a lack of evidence for TIGER VODKA, and a substantial proportion of evidence is focussed on its TIGER STRIKE sign, which is not relied upon in the opposition. In my view, the opponent has failed to demonstrate use of a sufficient number of its marks for the purpose of assessing likelihood of confusion based on the existence of a family of marks.

LIKELIHOOD OF CONFUSION

48. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in

¹⁶ Case C-234/06

their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa.

49. Earlier in my decision, I found the marks to be visually and aurally similar to a medium to high degree. Conceptually, I found the marks to be similar to a medium degree. I have found the distinctive character of the opponent's mark to have a medium to high degree of inherent distinctive character and that it is the TIGER element in which the distinctiveness lies. I have found that the average consumer group comprises of members of the general public over the age of 18. I have found the degree of attention to be medium. I have found that visual considerations will dominate the selection process, however, an aural component of the purchasing process is not discounted. I have found the goods to vary in similarity, between those that are identical to those that are similar to a high degree.

50. Taking all of the above factors into account and even bearing in mind the principle of imperfect recollection, I do not consider that the average consumer will inaccurately recall or misremember the marks for one another. I am of the view that the visual and aural differences between the marks, the presence of the word LYFE in particular, are sufficient to enable customers to remember which marks are which. Consequently, I do not consider that there exists any likelihood of direct confusion between the marks at issue, even on identical goods.

51. I will proceed to consider a likelihood of indirect confusion. In this regard, I note the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein 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).”

52. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

53. Bearing all of the above in mind, I am of the view that it is likely that the average consumer would, upon being confronted with the parties’ marks, believe that they originate from the same or economically linked undertakings. I say this because I consider that the shared common element of ‘TIGER’, which appears at the start of each of the marks,¹⁷ and has no association with the goods at issue, will be indicative of a common undertaking responsible for the marks. Further, the difference created by the use of the word ‘LYFE’ on the

¹⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02

goods at issue is such that consumers will likely consider it to be logical indicators of a sub-brand or brand extension of TIGER GIN. For example, upon seeing 'TIGER GIN' on a range of gin goods and then seeing 'TIGERLYFE' on a range of other spirits, the consumer will consider that TIGER GIN has created a sub-brand that provides a wider range of spirits to customers; or that LYFE denotes another variant of gin under the TIGER GIN offering. Consequently, I consider that there is a likelihood of indirect confusion between the marks at issue.

FINAL REMARKS

54. As I have found that there is a likelihood of confusion between the application and the 'TIGER GIN' mark, there is no additional benefit for the opponent if I were to also consider the remainder of the earlier marks relied upon in the opposition.

COSTS

55. The opponent has been successful and is, therefore, entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In order to maintain the status of this tribunal as a low-cost jurisdiction, awards of costs are contributory, rather than compensatory. For professionally represented parties, this means that costs are usually awarded from a scale. The opponent is considered to be an unrepresented party. The scale is not applied to them, because, if it were, they might receive costs in excess of what they may reasonably have incurred, which would undermine the contribution-not-compensation approach and the indemnity principle. The sum to be awarded is analogous to that set out in Part 46 of the Civil Procedure Rules. Such costs would be based on £19 per hour.¹⁸ At the conclusion of the evidence rounds the tribunal wrote to the opponent's business consultant and invited her to indicate whether she intended to make a request for an award of costs. The opponent's representative completed the proforma with the following number of hours :

Review required as strict proof demanded by the applicant	13 hours 30 minutes
---	---------------------

Collection and collation of evidence, preparation of evidence

¹⁸ As was pertinent at the time these proceedings were launched and as set out in The Litigants in Person (Costs and Expenses) Act 1975 (as amended).

'templates' and annex of exhibits	11 hours 15 minutes
Compilation of witness statement and evidence and review thereof:	17 hours
Revisions, review, compilation, page numbering, scanning, compression and submission	27 hours
Notice of opposition (TM7A/TM7/TM33):	1 hour
Considering the TM8	15 minutes
TOTAL	70 hours
Official fees:	£100

56. The opponent has submitted that they spent 1 hour preparing the TM7A/TM7 and TM33. The change of representative is not a cost for which the opponent is entitled to be compensated for and so I award **45 minutes** for the preparation of the TM7A and TM7 only. I consider **15 minutes** is reasonable for reviewing the applicant's TM8.

57. The opponent has claimed a total of 55 hours and 15 minutes for activities associated with drafting, compiling and filing the witness statement and its evidence. Some of the opponent's evidence was not relevant and replicated evidence previously filed in another opposition (as expressly stated by the opponent), particularly the evidence relating to TIGER STRIKE. Therefore, I have reduced the time claimed for preparing the evidence to **20 hours**, which I consider to be a reasonable amount of time in any event for this activity.

58. The opponent has also claimed 13 hours and 30 minutes for "Review required as strict proof required by the applicant". Whilst I note that the applicant's TM8 stated that "The applicant denies all the claims and allegations made in the opponent's TM7/Statement of Grounds and the opponent is put to strict proof of all the claims and allegations contained therein," this is standard wording for parties to use in their TM8's and does not place an additional burden on the opponent beyond what is ordinarily required. Accordingly, the opponent is not entitled to be additionally compensated for this time. The total time the opponent will be awarded, on the contributory basis outlined above is therefore 21 hours, which results in an award of £399 in addition to the £100 official fees.

59. I therefore order TIGERLYFE IP LLC. to pay JEFFREY JOSHUA LAWRENCE the sum of **£499**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 27th day of June 2026

A KLASS

FOR THE REGISTRAR