

**O/0538/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 4178307**

**IN THE NAME OF TEMPUS AI, INC.**

**TO REGISTER THE FOLLOWING TRADE MARK:**

**OLIVIA**

**IN CLASSES 9 AND 44**

**AND**

**IN THE MATTER OF FAST TRACK OPPOSITION THERETO**

**UNDER NO. 600003723**

**BY**

**OLIVIA AI NETWORK LIMITED**

## BACKGROUND AND PLEADINGS

1. Tempus AI, Inc. (“the applicant”) applied to register the trade mark shown on the cover page of this decision (UK trade mark no. (“UKTM”) 4178307) in the UK on 24 March 2025, claiming a priority date of 1 October 2024 (based upon a United States of America trade mark<sup>1</sup>). It was accepted and published in the Trade Marks Journal on 11 April 2025. Subsequent to the publication, the specification has been amended and currently reads as follows:

Class 9        Downloadable software in the nature of a mobile application using artificial intelligence (AI) for use in providing personal health care support services to patients, assisting patients with tracking health metrics and data, providing access to medical records and health information, communicating with healthcare providers, preparing for medical appointments, and providing personalized health insights to patients, all of the aforesaid software goods in relation to medical services and providing medical and patient health information.

Class 44        Medical services; providing medical information and patient health information; providing medical information to patients using artificial intelligence to provide personalized health insights for patients.

2. On 10 July 2025, Olivia AI Network Limited (“the opponent”) opposed the trade mark on the basis of Section 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier UK Trade Marks:

**UKTM no. 4011491 (Series of two) (“the 491 mark”)**

OLIVIA NETWORK

Olivia Network

Filing date 6 February 2024; registration date 10 May 2024. For the following goods/services:

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<sup>1</sup> United States of America TM No. 98781222

Class 9      Computer software relating to artificial intelligence; computer software for use in purposes relating to artificial intelligence.

Class 42      Computer services.

**UKTM no. 4012358 (Series of two) (“the 358 mark”)**

OLIVIA

Olivia

Filing date 8 February 2024; registration date 10 May 2024. For the following goods/services:

Class 9      Computer software relating to artificial intelligence; computer software for use in purposes relating to artificial intelligence.

Class 42      Computer services.

3. The opponent argues that the respective goods/services are identical or similar and that the marks are similar.

4. The applicant filed a counterstatement denying the claims made. Specific submissions will be referred to as and when appropriate during this decision.

5. In accordance with section 6 of the Act, the mark relied upon by the opponent is considered an earlier mark. The mark has not been registered for five years at the date of application for the contested mark and so, in accordance with section 6A of the Act, it is not subject to proof of use; the opponent may rely upon all the goods/services as identified.

6. Rule 6 of the Trade Marks (Fast Track Opposition (Amendment) Rules 2013, S.I. 2013 2235 disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but it provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give live to either party to file evidence upon such terms as the registrar thinks fit.”

7. The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

## **REPRESENTATION**

8. The opponent is represented by Ezra's iP<sup>2</sup> and the applicant is represented by Harper James Ltd. Neither party sought leave to file evidence. A hearing was neither requested nor was it considered necessary. The applicant filed written submissions in lieu dated 23 December 2025. The opponent has filed no submissions beyond those made in the notice of opposition. Whilst I do not propose to summarise the parties' submissions, I shall refer to them as and where appropriate during this decision. This decision is taken following a careful consideration of all papers on file.

## **RELEVANCE OF EU LAW**

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.

## **DECISION**

### **Section 5(1), 5(2)(a) and 5(2)(b)**

10. Section 5(1) of the Act reads as follows:

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<sup>2</sup> A TM33P on was filed on 2 January 2026 appointing Ezra's iP as the opponent's representative. Prior to this, the opponent was represented by Alpha & Omega.

“5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

11. Section 5(2)(a) of the Act is as follows:

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

(a) it is identical with an earlier trade mark and is to be registered for goods or services 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”.

12. Section 5(2)(b) of the Act is as follows:

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

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

13. Section 5A of the Act states as follows:

“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.”

## **RELEVANT LAW**

13. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [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.

## APPROACH

14. Mark 358 patently represents the opponent's strongest prospect of success. If the opponent does not succeed based upon that mark, it clearly will not succeed based upon the other. I proceed accordingly.

## IDENTITY OF THE MARKS

15. The respective trade marks are shown below:

| Earlier trade marks         | Contested trade mark |
|-----------------------------|----------------------|
| <p>OLIVIA</p> <p>Olivia</p> | <p>OLIVIA</p>        |

16. As per the legislation set out above, in order for an opposition to succeed under sections 5(1) and 5(2)(a), the marks must be identical. In *SA Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the CJEU held that:

“54. ... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

17. The respective marks are all word-only marks, which consist of the word, OLIVIA. A word trade mark protects the notional use of the word itself, irrespective of font, capitalisation or otherwise. I find the parties' marks to be identical.

## **COMPARISON OF GOODS AND SERVICES**

18. The competing goods/services are shown in paragraphs one and two of this decision.

19. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, 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."

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

- (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.

21. 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 that:

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

22. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

“...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 that the responsibility for those goods lies with the same undertaking.”

23. In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services

are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL O/255/13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

24. I bear in mind that it is permissible to group goods/services together for the purposes of the assessment<sup>3</sup>.

### Class 9

25. The applicant submits:

“13. It is admitted that the goods in class 9 of the Contested Application are similar to the goods and service in classes 9 and 42 of Earlier Registration 358, however class 9 of the Contested Application is limited to software goods in relation to medical services and providing medical and patient health information. Except for the above, the Contested Goods and Services are dissimilar to the goods and services of Earlier Registration 358.”

*Downloadable software in the nature of a mobile application using artificial intelligence (AI) for use in providing personal health care support services to patients, assisting patients with tracking health metrics and data, providing access to medical records and health information, communicating with healthcare providers, preparing for*

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<sup>3</sup> *Separode Trade Mark* O/399/10

*medical appointments, and providing personalized health insights to patients, all of the aforesaid software goods in relation to medical services and providing medical and patient health information.*

26. The opponent's specification includes the term *computer software for use in purposes relating to artificial intelligence* in class 9. I note that the applicant's specification includes the limitation "all of the aforesaid software goods in relation to medical services and providing medical and patient health information". However, I consider that the opponent's term is wide and could encompass the applicant's above terms, regardless of the applicant's limitation, and therefore they are identical on the principles outlined in *Meric*. If I am wrong about that, I find the goods are at least highly similar. The goods may be utilised for the same, or a similar purpose, and may be accessed by the same users. The nature of the goods is highly similar, and I find it likely that trade channels will overlap. The goods may play competitive roles, and it would not be unreasonable for the consumer to consider that the goods are important or indispensable to one another and therefore expect the goods to be offered by the same undertaking.

#### Class 44

27. The applicant submits:

"12. It is denied that the services in class 44 of the Contested Application are similar to the goods and services protected in classes 9 and 42 by Earlier Registration 358, and the Opponent is put to strict proof thereof. The services in class 44 of the Contested Application are limited to the provision of medical services and medical information whilst classes 9 and 42 of Earlier Registration 358 protect the provision of computer software and computer services."

28. The opponent submits:

"Thus, it is reasonable to assume that the specified medical services are to be offered via a digital platform, utilising the class 9 goods which have been specified, which are, essentially, artificial intelligence services. It is therefore submitted that an undertaking offering identical or similar goods and services

to those for which the earlier right is registered, under the mark OLIVIA, would be confused with those offered by the opponent under the identical mark.”

### *Medical services*

29. In the absence of specific submissions, I consider that *medical services* refer to clinical services delivered by medical professionals to maintain or improve a person’s health. The purpose and nature of the goods/services at issue plainly differs, as the goods/services within the opponent’s specification relate to the provision of computer software and computer services. Whilst I accept that computer software may be used as a tool within the provision of medical services, I consider that this is too broad to find any real level of similarity between the goods/services. I find that trade channels will not overlap. I do not find them to be competitive, nor are they in complimentary. I find the goods/services to be dissimilar.

### *Providing medical information to patients using artificial intelligence to provide personalized health insights for patients.*

30. The opponent’s specification includes the term *computer software for use in purposes relating to artificial intelligence* in class 9. The opponent submits (as above) that the applicant’s services in Class 44 would be offered using its goods in Class 9. I agree with this submission as it is highly likely that a form of computer software will be used to assist with the applicant’s services. The goods/services will differ in nature, uses and trade channels. However, there may be an overlap in purpose and user. The goods/services are not competitive; however, they may be complementary as software is likely to play an integral and important part in the delivery of the contested services in such a way that the average consumer is likely to believe they come from the same economic undertaking. I find these respective goods/services to have a low to medium degree of similarity.

### *Providing medical information and patient health information*

31. I refer to my findings above and note that this term would also cover the provision of the above services, using AI to provide personalised health insights for patients. The goods/services will differ in nature, uses and trade channels. However, there may

be an overlap in purpose and user. The goods/services are not competitive; however, they may be complementary as software is likely to play an integral and important part in the delivery of the contested services in such a way that the average consumer is likely to believe they come from the same economic undertaking. I find these respective goods/services to have a low to medium degree of similarity.

32. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those services that I have found to be dissimilar will fail<sup>4</sup>. Therefore, the opposition under section 5(1) and 5(2)(a) fails for the following services:

Class 44      Medical services

### **AVERAGE CONSUMER AND THE PURCHASING ACT**

33. 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*, Case C-342/97.

34. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

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<sup>4</sup> *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

35. The average consumer for the goods/services will be both members of the general public and business users, including medical professionals. The costs of the various goods and services at issue is likely to vary fairly significantly, as will the frequency of the associated purchase. Various factors will be taken into account such as reputation of the provider, cost of the goods/services on offer, ease of access/use and suitability for particular requirements, such as legal obligations under data protection. Even for goods or services that might be used more frequently and be of lower (or no) cost, such as some types of software, the average consumer is likely to consider factors such as security and functionality. Consequently, I consider that a reasonably high degree of attention will be paid during the purchasing process (although not the highest degree).

36. The goods/services are likely to be advertised primarily via visual means either via a website, for example, or catalogues/advertisements. Consequently, I consider that the purchasing process will be predominantly visual. However, I do not discount an aural component to the purchase given that word-of-mouth recommendations may also play a part, and there may be discussions between users and medical company representatives.

### **DISTINCTIVE CHARACTER OF THE EARLIER TRADE MARK**

37. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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 *WindsurfingChiemsee 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)."

38. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness and no evidence has been filed to that effect. Therefore, I only have the inherent position to consider.

39. The opponent's mark consists of the word 'Olivia' which is a forename. As there are no other elements to the mark which contribute to its overall impression, the distinctiveness lies in the word itself.

40. I recognise that 'Olivia' is a common name within the UK. However, the mark is not descriptive or directly allusive of the goods/services, and therefore overall, I consider the earlier mark to be inherently distinctive to a below-medium degree.

## **CONCLUSIONS ON LIKELIHOOD OF CONFUSION**

41. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's

trade mark and the average consumer for the goods/services and the nature of the purchasing process.

42. I have found as follows:

- The goods/services at issue range from being identical/highly similar to similar to a low to medium degree (except those which I have found to be dissimilar);
- I have identified that the average consumer will be both members of the general public and business users, including medical professionals. They will select the goods/services primarily by visual means, although I do not discount an aural component;
- I have concluded that a reasonably high degree of attention will be paid during the purchasing of goods/services (but not the highest);
- The marks are identical;
- I have found the earlier mark to be inherently distinctive to between a below-medium degree;

43. Notwithstanding that I have found the earlier mark to be inherently distinctive to a below-medium degree, this does not preclude a finding of a likelihood of confusion.<sup>5</sup> Further, I have found the marks to be identical meaning there is nothing to assist the average consumer in distinguishing between them. I consider that the average consumer, when faced with an identical mark, would be directly confused as to the trade origin of the goods/services at issue, which I have found to range from being identical/highly similar, to similar to a low to medium degree.

## **FINAL REMARKS**

44. As the 358 trade mark leads to the opposition being successful for the goods/services which I have found to be similar, there is no need to consider the 491 trade mark upon which the opposition is also based. The 491 mark could not put the

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<sup>5</sup> *L'Oréal SA v OHIM*, Case C-235/05 P, paragraphs 42 and 45

opponent in any stronger position, particularly because I note that the specification is identical in both the 358 and 491 marks.

## **CONCLUSION**

45. The opposition is partially successful. Therefore, subject to appeal, the application will be refused in relation to the following goods/services:

Class 9      Downloadable software in the nature of a mobile application using artificial intelligence (AI) for use in providing personal health care support services to patients, assisting patients with tracking health metrics and data, providing access to medical records and health information, communicating with healthcare providers, preparing for medical appointments, and providing personalized health insights to patients, all of the aforesaid software goods in relation to medical services and providing medical and patient health information.

Class 44      Providing medical information to patients using artificial intelligence to provide personalized health insights for patients; providing medical information and patient health information

46. In light of my earlier findings, the opposition will fail in respect of the following services for which the application will proceed to registration:

Class 44      Medical services

## **COSTS**

47. The opponent has enjoyed a greater measure of success and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. In the circumstances, I award the opponent the sum of £450.00 as a contribution towards the costs of proceedings. The sum is calculated as follows:

|                                                                                 |         |
|---------------------------------------------------------------------------------|---------|
| Filing a notice of opposition and considering the Applicant's counterstatement: | £250.00 |
| Considering the applicant's written submissions:                                | £100.00 |

Official fee: £100.00

Total: £450.00

48. I therefore order Tempus AI, Inc. to pay Olivia AI Network Limited the sum of £450.00. The above sum should 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 27<sup>th</sup> day of June 2026**

**LA Bailey**

**For the Registrar**