

BL O/0578/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION No. 4073176

BY XIAOQIANG XING

TO REGISTER THE FOLLOWING TRADE MARK:

G4Free BareFeel

IN CLASS 25

-AND-

THE OPPOSITION THERETO UNDER No. 450451

BY G. & G. S.r.l.

Background and pleadings

1. On 8 July 2024, XIAOQIANG XING (“**the Applicant**”) applied to register the trade mark shown on the cover page of this decision. It was accepted and published in the Trade Marks Journal on 26 July 2024. Registration is sought for the following goods:

Class 25:

Athletic clothing; Coats; Corsets; Dresses; Gym suits; Hosiery; Jumpsuits; Leggings [trousers]; Leotards; Maternity clothing; Men's clothing; Shirts; Skirts; Socks; Sports jerseys; Sports singlets; Swim suits; Tee-shirts; Trousers; Yoga pants.

2. On 28 October 2024, G. & G. S.r.l. (“**the Opponent**”) opposed the application in its entirety under section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”).¹ The opposition is based upon the Opponent’s UK trade mark registration shown below. The Opponent relies on all the goods for which its trade mark is registered, these are set out below.

Representation of the mark:

G4

Type of mark:

word mark

Registration Number:

3843157

Filing date:

26 October 2022

Registration date:

24 March 2023

Class 18:

Bags; Shoulder bags; Handbags; Evening handbags; Small clutch purses; Beach bags; Backpacks; Book bags; Gym bags; Sport bags; Haversacks; Suitcases; Trunks and travelling bags; Suitcases with wheels; Travelling sets; Travel cases; Garment bags for travel; Purses; Pocket wallets; Banknote

¹ 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.

holders; Business card cases; Key cases; Credit-card cases; Carrying cases for documents; Briefcases and attaché cases; Vanity cases, not fitted; Cosmetic purses; Small bags for men; Belt bags; Pouches for holding make-up, keys and other personal items; Umbrellas; Walking sticks; Saddlery and apparel for animals; Clothing for pets; Collars for animals; Covers for animals; Animal carriers [bags].

Class 25:

Clothing; Outdoor clothing; Outerwear; Jackets; Bomber Jackets; Blousons; Rainproof jackets; Sport jackets; Blazers; Coats; Duffel coats; Overcoats; Raincoats; Trench coats; Knitwear; Hosiery; Underwear; Beachwear; Nightwear; Footwear; Headgear; Belts; Shawls, scarves and stoles; Neckties; Foulards [clothing articles]; Kerchiefs [clothing]; Gloves; Neckwear; Sportswear; Sports footwear; Sports headgear.

3. By virtue of its earlier filing date, the registration upon which the Opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier mark had not been registered for more than five years at the filing date of the contested application, it is not subject to the use conditions pursuant to section 6A of the Act, and accordingly, the Opponent may rely on all the goods for which its trade mark is registered without having to show any use at all.

4. The Opponent claims that the competing marks are similar and that the respective goods are similar, giving rise to a likelihood of confusion.

5. The Applicant filed a defence and counterstatement denying the claims.

6. The Applicant filed evidence and the Opponent filed evidence in reply, however, neither party filed submissions during the evidence rounds. A hearing was not requested, and neither party elected to file submissions in lieu of a hearing. I make this decision following a careful consideration of the papers before me.

7. The Opponent is represented by PAPYRUS IP LTD and the Applicant is represented by Monyin Lin Chien.

EVIDENCE FILED

Applicant's evidence

8. The Applicant, XIAOQIANG XING, provides their evidence in a witness statement dated 15 July 2025, accompanied by five exhibits labelled XQ1 – XQ5. The narrative evidence explains that the applied-for mark, 'G4Free BareFeel', is a sub-brand of 'G4FREE'. The exhibits include images of the 'BareFeel' collection, which consists of athleisure clothing,² and describe the *"BAREFEEL FABRIC"* from which the clothing is made as *"ultra soft and skin-friendly"*.³ Also included are examples of social media promotion and an online 'Life&Style' article from November 2024 featuring 'G4FREE' workout pants.

9. The witness further states that they are the director of HOMDING TRADE (HONGKING) CO., LIMITED, which owns UK trade mark registration No. 917865479 for 'G4FREE', noting that its registration date, 25 September 2018, is *"much earlier"* than that of the Opponent's trade mark.⁴ They assert that, as director of the company, they own the trade mark rights in 'G4FREE' *"indirectly"*.⁵ The witness also provides yearly sales figures for the 'G4FREE' brand for 2022,⁶ apparently in support of the Applicant's claim to earlier rights. Finally, they assert that *"the contested trade mark, as a sub-brand series of 'G4FREE' has built up a very significant goodwill in relation to the business and enjoys a reputation among the relevant public"*.⁷

10. It is apparent from this evidence that the Applicant seeks to establish earlier trade mark rights. However, the issue of earlier use has no bearing upon these proceedings. Tribunal Practice Notice 4/2009 *"Trade mark opposition and invalidation proceedings – defences"*, outlines the approach to such defences. It states, under the heading *"The position with regard to defences based on use of the trade mark under attack which precedes the date of use or registration of the attacker's mark"*:

² Exhibit XQ2.

³ Exhibit XQ2, page 20.

⁴ Witness statement of XIAOQIANG XING, paragraph 2.

⁵ Witness statement of XIAOQIANG XING, paragraph 3.

⁶ Exhibit XQ3.

⁷ Witness statement of XIAOQIANG XING, paragraph 10.

“4. The viability of such a defence was considered by Ms Anna Carboni, sitting as the appointed person, in *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. Ms Carboni rejected the defence as being wrong in law.

5. Users of the Intellectual Property Office are therefore reminded that defences to section 5(1) or (2) grounds based on the applicant for registration/registered proprietor owning another mark which is earlier still compared to the attacker’s mark, or having used the trade mark before the attacker used or registered its mark are wrong in law. If the owner of the mark under attack has an earlier mark or right which could be used to oppose or invalidate the trade mark relied upon by the attacker, and the applicant for registration/registered proprietor wishes to invoke that earlier mark/right, the proper course is to oppose or apply to invalidate the attacker’s mark.”

11. Even if the Applicant were to establish by way of its evidence that it owns a trade mark right which predates the Opponent’s registration, this is not a viable defence to the present opposition (as no invalidity action against the Opponent’s earlier right has been filed) and I must confine my attention to the trade mark issues under section 5(2)(b) of the Act.

Opponent’s evidence

12. The Opponent filed evidence in reply in the form of two witness statements, namely:

- (1) The witness statement of Cristina Calori dated 9 October 2025, accompanied by six exhibits labelled CC1 – CC6. Ms Calori is the Managing Director of the Opponent, a position she has held for 37 years.
- (2) The witness statement of Marine Body, a Chartered Trade Mark Attorney at the Opponent’s representative firm, dated 14 October 2025, accompanied by three exhibits labelled MB1 – MB3.

13. Ms Calori states that the Opponent owns the BARACUTA business and mark, and provides information about the origins of Baracuta, a British brand established in 1937. She explains that the G4 mark relates to a specific Baracuta jacket design, first used

on clothing in the UK in 1944. The evidence indicates that the G4 jacket is a later iteration of Baracuta's earlier G9 jacket – the earlier jacket having been originally designed as a golfing jacket, which originated in the 1930s, and that both models remain available today. In reference to the G9 jacket, it is said that the letter 'G' stands for 'golf', while the number '9' represents the nine holes on a golf course. In the evidence, the G9 and G4 jackets are often referred to as the 'Harrington' jacket, or as the 'Harrington' jacket by 'Baracuta'.

14. A large proportion of the evidence seeks to establish a rich brand history, showing how Baracuta's G4 jacket crossed the boundary from sportswear worn on the golf course into a more widely worn wardrobe staple associated with well-known actors and musicians throughout the decades since its inception. The evidence also refers to promotional campaigns and collaborations between Baracuta and other brands, including a recent collaboration with the British clothing brand Barbour, in which the collection featured the silhouette of the G4 jacket. Numerous online articles speak to the iconography of Baracuta's G9 and G4 styles. Sales and marketing figures are provided for the period 2022 to 2024.

15. Since the Opponent's earlier mark, registered in 2023, is not subject to proof of use, and there is no claim to reputation under section 5(3) of the Act, any relevance the evidence has will be in relation to a distinctiveness assessment. I shall therefore return to this evidence where appropriate in my decision.

16. Ms Body describes her exhibits as follows: *"Exhibit MB1 is a screenshot of an e-commerce platform showing products bearing the G4Free BareFeel mark"*; *"Exhibit MB2 are screenshots of Nike, Uniqlo and Sergio Rossi brands' websites"*; and *"Exhibit MB3 are screenshots of BP Showroom Ltd.'s website."* She provides no explanation of their relevance. The exhibits show only that the Applicant's athleisure clothing was advertised for sale on Amazon on 13 October 2025, with its *"BAREFEEL FABRIC"* described as having a *"skin-like touch"* and being *"soft on body"*. The BP Showroom exhibit mentions Baracuta's history dating back to 1937 and briefly refers to its *"G10, G4 and G9 (Harrington Jacket) silhouettes"* as having become *"timeless classics"*, but this small biography adds nothing more to the evidence already provided by Ms Calori. In the absence of any supporting narrative or submissions, I fail to see the relevance of the remaining third-party website evidence provided in Exhibit MB2.

Legislation and Case Law

17. Section 5(2)(b) of the Act states:

“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”.

18. I am guided by the principles applicable to the assessment of the likelihood of confusion, as cited with approval by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25. These principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (“OHIM”)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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 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 great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

19. The competing goods are set out below:

Class	Opponent's goods	Applicant's goods
18	Bags; Shoulder bags; Handbags; Evening handbags; Small clutch purses; Beach bags; Backpacks; Book bags; Gym bags; Sport bags;	

	Haversacks; Suitcases; Trunks and travelling bags; Suitcases with wheels; Travelling sets; Travel cases; Garment bags for travel; Purses; Pocket wallets; Banknote holders; Business card cases; Key cases; Credit-card cases; Carrying cases for documents; Briefcases and attaché cases; Vanity cases, not fitted; Cosmetic purses; Small bags for men; Belt bags; Pouches for holding make-up, keys and other personal items; Umbrellas; Walking sticks; Saddlery and apparel for animals; Clothing for pets; Collars for animals; Covers for animals; Animal carriers [bags].	
25	Clothing; Outdoor clothing; Outerwear; Jackets; Bomber Jackets; Blousons; Rainproof jackets; Sport jackets; Blazers; Coats; Duffel coats; Overcoats; Raincoats; Trench coats; Knitwear; Hosiery; Underwear; Beachwear; Nightwear; Footwear; Headgear; Belts; Shawls, scarves and stoles; Neckties; Foulards [clothing articles]; Kerchiefs [clothing]; Gloves; Neckwear; Sportswear; Sports footwear; Sports headgear.	Athletic clothing; Coats; Corsets; Dresses; Gym suits; Hosiery; Jumpsuits; Leggings [trousers]; Leotards; Maternity clothing; Men's clothing; Shirts; Skirts; Socks; Sports jerseys; Sports singlets; Swim suits; Tee-shirts; Trousers; Yoga pants.

20. In *Gérard Meric v OHIM*,⁸ (“*Meric*”), the General Court held to the effect that 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 and vice versa.

21. The Opponent’s Class 25 specification contains the broad term “*clothing*”. Since all the applied for goods are items of clothing, they are identical to the Opponent’s term according to the *Meric* principle.

⁸ Case T- 133/05

The average consumer and the nature of the purchasing process

22. Trade mark questions, including the likelihood of confusion, must be viewed through the eyes of the average consumer of the goods and services in question. It is therefore necessary to determine who the average consumer of the goods and services is, and how the consumer is likely to select them. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect.⁹ The word 'average' merely denotes that the person is typical,¹⁰ which in substance means that they are neither deficient in the requisite characteristics of being well informed, observant and circumspect, nor top performers in the demonstration of those characteristics.¹¹

23. 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, at [15]-[20], where he pointed out the following in relation to the average consumer:

- (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;

⁹ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

¹⁰ *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), paragraph 60

¹¹ *Schutz (UK) Ltd v Delta Containers Ltd* [2011] EWHC 1712, paragraph 98

- (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.

24. The average consumer of the goods will be a member of the general public. The goods will typically be selected via retail stores, catalogues and their online equivalents and in all instances, the consumer will be presented with an image of the marks, and the selection process will therefore be predominantly visual. I do not rule out an aural element, arising from requests to retail assistants, however, even in such circumstances, the consumer is still likely to have viewed the marks first before asking for the goods. Accordingly, visual considerations dominate.

25. Although the goods may range from inexpensive items to luxury, high-end products, for the most they are not particularly costly. Where the goods may attract different levels of attention depending on their price, the likelihood of confusion must nevertheless be assessed by reference to the lower level of attention.

26. Given the nature of the goods, the purchasing process will not require an overly considered thought process, therefore the average consumer is likely to pay a medium degree of attention when selecting them, as they will nonetheless wish to ensure that the goods meet their needs and requirements even in instances where they are low cost.

Comparison of marks

27. I have already set out the principles gleaned from established case law with regard to comparing competing marks. I also note that the Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM*,¹² 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.”

28. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

29. The marks being compared are shown below:

Opponent’s mark	Applicant’s mark
G4	G4Free BareFeel

Overall impression

30. As word-only marks, the overall impression of each mark lies in the words and alphanumeric combinations of which they comprise.

31. As regards ‘BareFeel’ in the application, those words are likely to be perceived as alluding to garments with a barely there feel - that finding is supported by the evidence describing “*BAREFEEL FABRIC*” as “*ultra soft and skin-friendly*”, having a “*skin-like touch*” and being “*soft on body*”. As such the average consumer may attribute little

¹² Case C-591/12P, at paragraph 34.

trade mark significance to those words and they will therefore attract less attention in the overall impression than the initial element 'G4Free'.

Visual comparison

32. The Applicant's mark reproduces the entirety of the Opponent's alphanumeric combination 'G4' at the beginning of its mark.

33. Since the Opponent's mark comprises only two characters, the remainder of the Applicant's mark, namely the words 'Free' and 'BareFeel', represent points of visual difference. However, bearing in mind my assessment of 'BareFeel' in the overall impression of the mark, and taking into account the general rule of thumb that the beginnings of marks tend to make a stronger impression on consumers,¹³ the fact that the visual identity occurs at the beginning of the mark and that the non-coinciding element is at the end of the mark and has descriptive connotations, is significant to the extent that I consider the marks to be visually similar overall to a low to medium degree.

Aural comparison

34. G4 in both marks will be pronounced identically, as GEE-FOUR. The words 'Free' and 'BareFeel', represent points of aural difference.

35. Given my assessment of the relative weight the words 'BareFeel' play in the overall impression of the Applicant's mark, I bear in mind that secondary (or even descriptive) elements in a mark may not always be spoken by the average consumer, this is because in everyday life people often say things in a simplified or shortened form (even though they may be aware of the entire mark).¹⁴ I therefore do not rule out the possibility that 'BareFeel' may not be verbalised by a proportion of the average consumer, who may simply shorten the mark to G4Free, thus rendering the marks aurally similar overall to a medium to high degree.

36. That said, even though the words 'BareFeel' carry limited weight in the overall impression of the mark, I do not discount that there remains a proportion of average

¹³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, paragraph 81.

¹⁴ See the decision of the Appointed Person in *ENRICH LEARNING*, BL O/1141/25, [16] – [18].

consumers who will still verbalise those words. In such circumstances I consider the marks to be aurally similar overall to a low to medium degree.

Conceptual comparison

37. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.¹⁵ Although the evidence explains that, in the context of the Opponent's G9 jacket style, the letter 'G' stands for 'golf', and the number 9 represents holes on a golf course, there is no equivalent evidence before me about the G4 jacket. In any event, even if the Baracuta brand intends the 'G' to stand for golf in its G4 jacket style, and the number 4 to also relate to holes on a golf course, those meanings would not be immediately apparent from the mark itself. In my view, the combination G4 does not immediately convey any clear meaning to the average consumer. I consider the alphanumeric combination G4 to have no immediately discernible concept, and the earlier mark is therefore conceptually neutral.

38. Likewise, G4 in the Applicant's mark is conceptually neutral. In the context of the goods for which registration is sought, including athletic clothing, the word 'Free' may convey the concept of garments that allow freedom of movement, rather than the unlikely meaning that the goods are free of charge. The words 'BareFeel', as I have already noted, are likely to convey the concept of garments with a barely there feel, e.g. garments made of soft fabrics. Whilst the concepts conveyed by 'Free' and 'BareFeel' are allusive and therefore not particularly distinctive, they nonetheless introduce conceptual differences between the marks. Since the Opponent's mark consists only of G4, it does not convey either of those concepts. To that extent, the marks are not conceptually similar.

Distinctive character of the earlier trade mark

39. The degree of distinctiveness of the earlier mark is one of the factors that must be taken into account when assessing whether there is a likelihood of confusion. This is because the more distinctive the earlier mark, the greater the likelihood of confusion may be.¹⁶

¹⁵ This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R. I-643; [2006] E.T.M.R. 29.

¹⁶ *Sabel v Puma*.

40. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,¹⁷ 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 C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, 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).”

41. Registered trade marks possess varying degrees of inherent distinctive character, ranging from low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

42. Alphanumeric marks often possess a weaker inherent distinctive character, not least because consumers often encounter alphanumeric sequences as product codes, sizes, or model numbers. Whilst the mark is neither allusive nor descriptive of the Opponent's goods, I find that the earlier mark is not particularly distinctive because it

¹⁷ Case C-342/97.

consists merely of the two-character alphanumeric sequence ‘G4’, I therefore consider the mark to possess a low degree of inherent distinctive character.

43. The inherent distinctiveness of a mark can however be enhanced by virtue of the use that has been made of it, and the relevant date for that assessment is the filing date of the contested application, being 8 July 2024 in this case.

44. Although the Opponent makes no express claim to enhanced distinctiveness, it has filed evidence concerning the history of the Baracuta brand and, in particular, its G9 and G4 jacket styles. I therefore take this evidence into account in assessing whether the distinctive character of the G4 mark had been enhanced through use by the relevant date of 8 July 2024.

45. The evidence points to Baracuta’s rich brand history, with its G9 jackets, originally designed for golfers, and later its G4 jackets, both said to have become iconic fashion staples. I also note the following in relation to the evidence:

(1) Two sets of turnover figures are provided for “*goods bearing the G4 mark*”¹⁸ sold in the UK between 2022 and 2024.

(a) The first, provided in GBP, is set out below. Ms Calori describes these as “*sales to the shops and [...] not the final sales amount*”,¹⁹ which I understand to mean wholesale rather than retail turnover. Even allowing for the fact that retail values would be higher than wholesale, the figures amount to only 844 items sold to UK shops over three years.

	£ GBP Turnover	Number of goods
2024	29,960	179
2023	27,320	222
2022	57,916	443

¹⁸ Witness statement of Ms Calori, paragraph 10.

¹⁹ Ibid.

(b) The second is provided as a total figure of €166,413.34 Euros for the same three-year period, relating to G4 goods “*sold directly through our website*,”²⁰ which I understand to mean were retail sales made directly to the public. There is no evidence of unit sales or prices, however, given that the figures produced at (a) suggest a price per unit ranging between £130 to £167 (to wholesalers), even taking £150 as a mid-point unit price within that range (although retail price would be higher), it would amount to around 1,000 units of goods sold.

- (2) It is unclear what part of 2024 the turnover figures cover and, therefore, whether all or any of the 2024 sales occurred before the relevant date.
- (3) Marketing figures for the G4 mark, shown below, have been provided for 2022, 2023 and 2024 (the 2024 figures extend beyond the relevant date of 8 July 2024). The total spend in Euros over the 3 year period was €89,361.04. According to Ms Calori’s narrative evidence, these figures include expenditure in relation to newspaper and magazine features, TV Spots, trade shows and digital advertising. The marketing examples in evidence appear to be directed at the wearer of the goods, namely retail consumers, rather than trade customers.

	Euro
2024	25,845.64 (until September 30 th)
2023	44,907.21
2022	18,608.19

- (4) Whilst many extracts from UK magazine articles are provided in Ms Calori’s Exhibit CC6, the relevant mark is not featured in all of them.
- (5) The social media evidence is not all in English; of the posts I am able to read, I note they feature Baracuta with some including references to its “*iconic*” G4 style, however, not all posts are dated before the relevant date, and even those that are, are not always referring to the G4 mark. Whilst

²⁰ Ibid.

“potential reach” statistics are provided for the posts, it is not clear that these indicate engagement with UK consumers only.²¹

- (6) Whilst evidence has been provided about collaborations between Baracuta and other brands, it is not clear whether the garments forming part of those collections were made available to UK consumers. For example, one collaboration refers to a collection of garments (which includes the G4 jacket) being available in Baracuta’s Milan store, without identifying whether the other selected retailers were UK retailers.²²
- (7) There is no indication of how geographically widespread the use of the registration has been in the UK.

46. No market share figures have been provided, nor has any evidence been filed as to the size of the relevant market. However, the UK clothing market, and even the narrower market for casual jackets, is likely to be very substantial indeed.

47. Although the G4 jacket is presented as a longstanding Baracuta design dating back to the 1940s, the Opponent has only provided turnover for a three-year period leading up to the relevant date and when viewed in the context of the UK clothing market, or even the narrower market for jackets, the amounts appear small, being in the range of less than £300,000 over a 3 year period with less than 2,000 unit sold (according to my calculations).²³ Further, while Ms Calori refers to the turnover relating to *“goods bearing the G4 mark”*, the evidence as a whole indicates that the G4 mark has been used only in relation to jackets, and not any other item of clothing.

48. Whilst marketing spend appears relatively high when compared with the sales figures, the amount spent is not substantial in absolute terms and is insufficient to counterbalance the relatively low sales figures.

49. Whilst the evidence shows that Baracuta has a rich brand history, and however longstanding or well known the Baracuta brand may be, the relevant question here is the extent of use of the G4 mark. Taking the evidence as a whole, and bearing in mind

²¹ Exhibit CC6, pages 102- 119.

²² Exhibit CC6, pages and 150.

²³ The approximate turnover figure is reached by combining the wholesale and retail turnover figures, allowing for the different currencies. The approximate quantity sold is reached by adding the recorded wholesale unit sales to the estimated retail unit sales.

the likely scale of the market for the relevant goods, the limited 2022 to 2024 snapshot of turnover and marketing figures provides little support for enhanced distinctiveness, particularly given the low sale figures and the absence of market share evidence or evidence as to the geographical extent of use. For the reasons set out above, the evidence also has a number of other deficiencies. It therefore does not provide a basis on which to conclude that the distinctive character of the G4 mark had been enhanced through use by the relevant date. I shall proceed on the basis of the inherent distinctiveness of the earlier mark only.

Conclusions on Likelihood of Confusion

50. In assessing the likelihood of confusion, I must adopt the global approach advocated by case law and take into account the fact that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture of them that they have kept in mind.²⁴ I must also consider the average consumer of the services, the nature of the purchasing process and bear in mind that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa.²⁵

51. Making an assessment as to the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. The global assessment is supposed to emulate what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.²⁶ The relative weight of the factors is not laid down by law but is a matter of judgement for the tribunal on the particular facts of each case.²⁷

52. It is well established that direct confusion arises where the consumer mistakes one mark for the other; whereas indirect confusion arises where the consumer recognises that the marks are different, but because of their similarities, believes that the goods or services bearing the later mark come from the same undertaking, or from an

²⁴ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

²⁵ *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 17

²⁶ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

²⁷ See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

economically linked undertaking.²⁸ For example, the consumer concludes that the later mark is another brand of the owner of the earlier mark because the marks share a common element.²⁹ In *L.A. Sugar Limited v By Back Beat Inc*,³⁰ Mr Iain Purvis Q.C., as the Appointed Person, explained that 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).”

53. I summarise my findings as follows:

- (1) the competing goods are identical;
- (2) the average consumer is a member of the general public who will pay a medium degree of attention during the selection of the goods;
- (3) the selection process is predominantly visual, although I do not discount an aural component;
- (4) the common component, ‘G4’, is visually and aurally identical and has no immediately discernible concept. Overall, the marks are visually similar to a

²⁸ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

²⁹ *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10, paragraphs 16-17 wherein Mr Iain Purvis QC, sitting as the Appointed Person, dealt with the distinction between direct and indirect confusion. In *Liverpool Gin Distillery* Arnold LJ approved Mr Purvis’s formulation but added at [12] that it is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

³⁰ Case BL-O/375/10.

low to medium degree. They are aurally similar to a low to medium degree where the Applicant's mark is verbalised in full, but the degree of aural similarity may rise to medium to high where 'BareFeel' is not verbalised. Taking into account the concepts conveyed by the word 'Free' and the words 'BareFeel', the marks are not conceptually similar overall.

(5) The earlier mark has a low degree of inherent distinctiveness.

54. Although the words 'BareFeel' represent points of difference between the marks, their highly allusive nature means that the visual, aural and conceptual differences they introduce carry less weight. The word 'Free' also introduces visual, aural and conceptual differences. However, it appears after 'G4', which is the first element of the Applicant's mark and the point at which consumer attention is likely to be focused. Moreover, the concept conveyed by 'Free' is not particularly distinguishing, as it may be perceived as referring to garments that allow freedom of movement. Taking these matters together, from that perspective, the average consumer is likely to perceive 'Free' and 'BareFeel' as operating as functional or descriptive signposts relating to the goods, such that the shared 'G4' element remains the principal anchor for the visual and aural similarity between the marks.

55. The inherent distinctiveness of the Opponent's mark is low, however, even where an earlier trade mark is deemed to have a weak distinctive character, that does not preclude a finding of a likelihood of confusion *per se*, and disproportionate emphasis should not be placed on the weak distinctive character of an earlier mark when assessing similarity and confusion, as confirmed by the CJEU in *L'Oréal SA v OHIM* (Case C-235/05 P) at [42] and [45]. The CJEU stated:

"45. [...] The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight

difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders.”

56. Furthermore, I note that the goods concerned are identical, which can offset a lesser degree of similarity between the marks.

57. Taking account of all relevant factors, in particular that the coinciding element ‘G4’, although low in distinctiveness, is still more distinctive than the non-coinciding elements, which are of even lower distinctiveness,³¹ I am satisfied that a significant proportion of the average consumer would be confused as to the commercial origin of the goods. However, even allowing for imperfect recollection, I consider that the visual and aural differences between the marks arising from the words ‘Free’ and ‘BareFeel’ are sufficient to avoid a likelihood of direct confusion.

58. In my view, a significant proportion of the average consumer is likely to be indirectly confused. They will recognise the common ‘G4’ element and perceive the words ‘Free’ and ‘BareFeel’ as denoting a variation within the same brand, rather than as indicating a different commercial origin. In particular, they are likely to perceive ‘G4Free’ as a sub-brand or brand extension of ‘G4’, with ‘Free’ indicating a range of garments that allow freedom of movement and ‘BareFeel’ identifying the fabric or feel of those garments. In those circumstances, the differences between the marks are likely to be attributed to marketing considerations or to sub-branding arising from product range segmentation, rather than to the goods originating from different undertakings.

OUTCOME

59. The opposition under section 5(2)(b) of the Act is successful. Subject to any appeal, contested trade mark application number 4073176 shall be refused registration.

³¹ *Face2FaceHR Partners Limited v Peninsula Business Services Limited*, BL O/0368/23 at [44].

COSTS

60. The Opponent has been successful and is therefore entitled to an award of costs based on the contributory scale set out in Tribunal Practice Notice 1/2023. In the circumstances I award the Opponent the sum of £700 as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Official fee	£100
Preparing the Statement of Grounds and considering the Counterstatement	£250
Preparation of evidence	£350
TOTAL	£700

61. I therefore order XIAOQIANG XING to pay G. & G. S.r.l. the sum of **£700**. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 2nd day of July 2026

Daniela Ferrari
For the Registrar