

O/0622/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION

NO. UK00003935262

BY NICHOLA HILDRED



IN CLASS 18

AND

**AN APPLICATION FOR A DECLARATION OF
INVALIDITY**

UNDER NO. CA000507849

BY LIAM PATERSON

Background and pleadings

1. Nichola Hildred (“the proprietor”) is the registered proprietor of the trade mark shown on the cover page of this decision, under registration number 3935262 (“the contested mark”). The contested mark was filed on 18 July 2023 and registered on 17 November 2023. It stands registered in respect of the following goods:

Class 18: Dog collars; Dog apparel; Dog leads.

2. On 27 August 2024, Liam Paterson (“the cancellation applicant”) made an application for a declaration of invalidity in respect of the contested mark, and all goods for which it is registered, pursuant to section 47 of the Trade Marks Act 1994 (“the Act”). The application is based upon section 5(2)(b) of the Act.
3. Under section 5(2)(b), the cancellation applicant relies upon the following trade mark and all goods for which it is registered, as laid out below:

UK Registration no. UK00003828601



Class 18: Dog coats; Dog clothing; Dog apparel; Dog leads.

Filing date: 12 September 2022

Registration date: 10 February 2023

4. The cancellation applicant's mark, by virtue of its earlier filing date, constitutes an Earlier Mark in accordance with section 6 of the Act. The Earlier Mark was registered less than five years before the filing date of the Contested Mark and is therefore not subject to proof of use in accordance with section 6A of the Act. The cancellation applicant can, therefore, rely upon all of the goods it has identified without having to demonstrate use of the marks
5. The cancellation applicant submits that the difference in the wording of 'K9' and 'CANINE' should be considered as a lack of distinction. And that the proprietors 'dog apparel', and 'dog leads' are identical to the cancellation applicant's goods, suggesting that 'dog apparel' can apply to various goods such as dog collars, dog harnesses and dog clothing articles, leading to a likelihood of confusion between the marks.¹
6. The proprietor filed a counterstatement denying the grounds of invalidation.²
7. Neither the cancellation applicant nor the proprietor is represented.
8. Both parties filed evidence and submissions, which are detailed below. Neither party requested a hearing, however both parties filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

9. The cancellation applicant's evidence in chief comes from Liam Paterson, who is the owner/sole proprietor of Alpha Canine Gear. His witness statement is dated 30 January 2025 and is accompanied by eleven exhibits, LP1 – LP11. The exhibits include evidence pertaining to the cancellation applicant's business, the similarity of the marks and examples of the goods in question. The evidence also contains extracts from websites, referencing the social media platforms used to promote

¹ Amended TM26I and statement of grounds, page 19.

² Amended TM8 and counterstatement filed

and advertise the cancellation applicant's goods. At the same time, the cancellation applicant filed submissions.

10. The proprietor filed evidence in the form of a witness statement dated 8 June 2025 from Nichola Hildred, the director of ALPHA K9. The witness statement is accompanied by eight exhibits, NH1 – NH8, and covers a range of matters within the evidence, which includes reference to the proprietor's business including its target market, examples of the contested goods in question, comparison of the marks, website screen shots and media exposure. At the same time, the proprietor filed written submissions.
11. The cancellation applicant filed evidence in reply via a second witness statement dated 25 July 2025 from Liam Paterson. The witness statement is accompanied by nine exhibits, LP12 – LP20. The main purpose of this evidence was to rebut the evidence filed by Nichola Hildred. At the same time the cancellation applicant filed written submissions.
12. Whilst the parties have both filed evidence of their use of their respective marks, for the reason outlined in paragraph 4 above, proof of use of the earlier mark is not required by the cancellation applicant.
13. There is also no requirement for the proprietor to evidence use of the contested marks for the purposes of this application to invalidate. This is because the application to invalidate is being pursued under section 5(2)(b) of the Act which requires me to carry out a notional assessment based upon all the ways in which the parties' respective marks could be used. Further, any assessment of enhanced distinctive character through use will only be relevant for the purposes of this decision with respect to the earlier mark. Consequently, whilst I have reviewed the evidence provided by the parties, any evidence regarding the parties' use of their respective marks will have no bearing on my decision, beyond my consideration of whether the earlier mark has enhanced its distinctive character through use.
14. I can confirm that I have reviewed the evidence in its entirety and will refer to it later in my decision, to the extent I consider it necessary.

RELEVANCE OF EU LAW

15. 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.

PRELIMINARY ISSUES

Goods comparison and the target market

16. Differences between the goods currently provided by the parties, such as their particular characteristics are irrelevant, except to the extent that those differences are apparent from each party's specification. In its counterstatement,³ the proprietor claims that the cancellation applicant's goods supply fashionable everyday leisurewear with the logo on and are designed for a pet and the pet loving market, whereas the proprietor's goods are designed specifically for dog training. However, a characteristic may be present or absent without changing the nature, function or purpose of the specified goods. As such, whether the goods are marketed as used for dog training or fashion is irrelevant. Since the cancellation applicant's earlier mark is not subject to proof of use, it is entitled to protection in relation to all the goods for which it is registered. It is the goods relied upon by the cancellation applicant and the goods applied for by the proprietor that I will be comparing later in this decision. The assessment I must make between the goods is a notional and objective assessment, rather than a subjective one.

17. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time. As such, it is not appropriate to take such factors into account in my assessment. I will make an assessment, later in

³ Form Amended TM8 and counterstatement dated 4 January 2025, page 11.

this decision, as to who the average consumer could be for the goods at issue. However, again, this is a notional assessment based on how the terms are worded.

State of the Register

18. In its Amended TM8,⁴ the proprietor has referred to a number of brand names that contain the words 'ALPHA' and 'K9' suggesting that these are generic words that are used commonly throughout the canine industry including within the niche of dog training apparel.
19. In considering this issue, I refer to the case of *Zero Industry Srl v OHIM*, Case T400/06, wherein the General Court ("GC") stated at paragraph 73 that: "As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71)."
20. It is important to recall that the state of the register is not evidence of how many of such trade marks are effectively used in the market, nor does it clarify whether consumers have or have not been confused by the presence of such marks. Further, no evidence has been filed in relation to these marks to show when these marks were in use, for what goods or the extent of their use on the market. Accordingly, for the avoidance of doubt, I will say no more about this and, instead,

⁴ Amended TM8 & Counterstatement, pages 7-8.

continue to make my decision based on a fair and notional assessment of the similarity of the marks and the respective goods at issue.

Passing Off

21. It is noted that the cancellation applicant refers to 'Passing off'⁵ in its written submissions in lieu. However, in this regard, it should be noted that as the invalidation is based on section 5(2)(b) only, the proprietor is not required to provide any submissions in relation to these other grounds. Accordingly, I will say no more on this matter.

DECISION

Section 47

22. The relevant parts of section 47 of the Act are as follows:

“(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground—

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied, unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless—

⁵ Cancellation applicant's written submissions in lieu of a hearing, filed 3 September 2025

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of application for the declaration,

(b) [...]

(c) [...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.

Section 5(2)(b)

23. Section 5(2) of the Act states that:

“(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, [...]

(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”.

“5A 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.”

The Principles

24. 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 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; Page 8 of 20

(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

25. The goods for comparison are as follows:

Cancellation applicant's goods	Proprietor's goods
Class 18:	Class 18: Dog collars; Dog apparel; Dog leads.

Dog coats; Dog clothing; Dog apparel; Dog leads.	
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26. The cancellation applicant submits that many of their goods are virtually identical and could easily be mistaken for one another to someone unfamiliar with the respective brands.⁶

27. The proprietor submits that the products are in no way identical, and that Alpha Canine Gear supplies dog owners and lovers with fashionable everyday leisure wear with the logo on, and that the apparel is designed for a pet and pet loving market and is no way distinct or specific to dog training. Furthermore, the proprietor submits that pet dog owners wanting fashion based apparel or pet dog leads, collars and harnesses are not going to find what they want on the ALPHA K9 online store, and further, ALPHA K9 is a store that is designed for a specific niche market and only sell products at dog trainer specific events and competitions as well as their own website.⁷

28. It should be noted, however, that I must compare the goods in the parties' specifications on the basis of the 'notional' coverage of the goods listed in the specifications. Any differences between the actual goods offered by the parties or the parties' marketing/trading styles will, as a matter of law, have no bearing on the outcome of my assessment of similarity between the goods at issue, unless those perceived differences are apparent from the specifications. This is because a trade mark registration is essentially a claim to a piece of legal property (the trade mark). Every registered mark is entitled to legal protection against the use, or registration, of the same or similar trade marks for the same or similar goods if there is a likelihood of confusion, and the scope of protection afforded to that mark will be identified in its specification. It is only if an application for a declaration of invalidity is received more than five years after the date the earlier mark is registered that the cancellation applicant can be required to provide evidence of use of its mark within the UK. Until that point, however, the earlier mark is entitled to protection in the UK in respect of the full range of goods for which it is registered.

⁶ Form Amended TM26I and statement of grounds dated 7 October 2024, page 19.

⁷ Form Amended TM8 and counterstatement dated 4 January 2025, page 11.

29. In *Gérard Meric v OHIM*, Case T-133/05, the GC stated that:

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

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

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

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;

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

32. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.⁸

Class 18

Dog apparel; Dog leads.

33. The above terms appear in the cancellation applicant's specification and are therefore self-evidently identical.

Dog collars.

34. I consider the above term in the proprietor's specification to be similar to '*Dog leads*' in the cancellation applicant's specification. The goods will be made by the same undertakings, share the same users and share the same trade channels. Dog collars are wearable accessories for the animal for the purpose of attachment and identification, whereas dog leads are hand-held control devices to guide, restrain and control an animal. Therefore, the goods differ in nature and purpose. A dog collar is worn around the dog's neck as a permanent accessory, whereas a

⁸ *Separode Trade Mark* (BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).

dog lead is attached to the collar during walking or training and removed afterwards, as such, the goods differ in method of use. The goods are not in competition however there may be a level of complementarity between the goods, in that leashes are commonly attached to collars in order to walk dogs, for example, and consumers may reasonably believe that they derive from the same undertaking. Accordingly, I consider the goods to be similar to a medium degree.

Average consumer and the purchasing act

35. 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.

36. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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.

37. The average consumer for the goods at issue are members of the general public who own dogs, with the goods self-selected from the shelves of general retail outlets, pet shops or their online equivalents. The goods will be relatively low cost and likely to be purchased reasonably frequently. Given the process of selection, the marks' visual impact is likely to play the greater role, although I do not discount the opportunity for aural recommendations made by a sales assistant. Taking all factors into consideration, I find the average consumer will apply a medium degree of attention during the purchasing process.

Comparison of marks

38. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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 Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration

is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

39. 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.

40. The respective trade marks are shown below:

Cancellation Applicant's mark	Proprietor's mark
	

Overall impression

41. The cancellation applicant's mark is a composite mark consisting of both word and figurative elements. The mark consists of a large black dog, that spans the width of the mark. Beneath the 'dog' device is the word 'ALPHA', presented in large bold stylised upper case letters. Underneath the word 'ALPHA' are the words 'Canine Gear', presented in a smaller typeface, in bold and stylised upper and lower case letters. However, the dog device merely reinforces the word "Canine", which alludes to who the goods are for. I also note that the word 'Gear' may be used to describe such items as 'clothing' and 'apparel'. Whilst I am conscious that attention is naturally drawn to the elements that can be read⁹, given the size and prominent

⁹ *MigrosGenossenschafts-Bund v EUIPO*, T-68/17

placement of the 'dog' device, I consider that the word 'ALPHA' and the device element will play an equal and significant role in the overall impression of the mark, with the words 'Canine Gear' being much smaller in size, playing a less significant role.

42. The proprietor's mark is a composite mark that consists of the words 'ALPHA K9' presented in white, standard upper case letters on a black background. A white paw print device is positioned between the elements 'ALPHA' and 'K9'. While I bear in mind that the eye is naturally drawn to the elements of a mark that can be read, I consider that the word 'ALPHA' will have the greater impact on the average consumer. In contrast, the alphanumeric element 'K9' will be understood as a reference to dogs and the 'paw print' device reinforces that message. As such, those elements are descriptive or allusive of the intended users of the goods and will therefore play a less significant role in the overall impression. The black ground will have little impact on the consumer.

Visual similarity

43. Visually, the marks coincide insofar as they share the identical word 'ALPHA'. This similarity appears at the beginning of the respective marks, being where customers tend to focus,¹⁰ as this position is generally considered to have more impact due to consumers in the UK reading from left to right. The marks differ in that the earlier mark consists of a 'dog' device and the additional words 'Canine Gear'. In the contested mark, the element 'K9' and the 'paw print' device create further points of difference. However, I accept that K9 is a shortened way of expressing the word canine that will be familiar to consumers. Considering all of these factors, I find the marks to be visually similar to a medium degree.

Aural similarity

44. Aurally, both marks begin with the word 'ALPHA'. In both marks this will be pronounced as two syllables, 'AL-FA'. 'K9', in the contested mark consists of two

¹⁰ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

syllables and will have the same pronunciation as the ordinary dictionary word 'Canine', present in the cancellation applicant's earlier mark, which also consists of two syllables. The word 'Gear' in the cancellation applicant's mark will be pronounced as one syllable, 'Geer'. Therefore, the contested mark will consist of 4 syllables, and the earlier mark will consist of 5 syllables. I do not consider that consumers will articulate the device elements in the respective marks. Overall, I find the marks to be aurally similar to at least a medium degree.

Conceptual similarity

45. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.²⁰ The assessment must, therefore, be made from the point of view of the average consumer.

46. Conceptually, the word 'ALPHA' will be given the same meaning in both marks and will be understood by the average consumer to refer to dominance or leadership within a group. In the context of dog-related goods, this contributes to a concept associated with leadership or dominance within a canine group.

47. With regards to the 'K9' element in the proprietor's mark and the 'CANINE' element in the earlier mark, in its statement of grounds¹¹, the cancellation applicant claims:

"The difference in the wording of "k9" and "CANINE" should be considered as a lack of distinction"

48. In response, the proprietor in its counterstatement¹² claims:

For reference the term canine and K9, whilst may seem very similar have different connotations within the professional dog world. The term "K9" was first used in 1942 when the US Secretary of War Robert P. Patterson established the first

¹¹ Amended TM261 & Statement of Grounds filed 7 October 2024, page 19.

¹² Amended TM8 & Counterstatement filed 4 January 2025, page 7.

military K-9 Corps. The US Army registered the wordmark "K9" as a federal symbol in 1959.

This is significant, for professionals (remembering that the target market for ALPHA K9 is the professional handler market and not pet owner); despite the fact few dog owners would know this.

K9 is synonymous with police, military and working dogs. Within the dog training industry the spelling of the term 'canine' is not used in tandem with working dogs but instead refers to (usually motivation based) 'positive' training and pet dog training.

Canine, scientifically, refers to the entire species (including coyotes, wolves and foxes) but the term K9 only refers to dogs. As such canine is also considered a 'science based' term, whereas k9 is synonymous with practical training.

Not only is this term different both in meaning and in professional connotation when it comes to these markets but they are seldom used interchangeably. You will note that in scientific literature, in dog training and within branding - the terms are used specifically within the context of the synonymous identity as laid out above."

49. I have deemed the average consumer of the goods to be dog owners, and note that the proprietor itself accepts above that few dog owners would know that K9 is synonymous with police, military and working dogs. Consequently, I consider that dog owners will recognise 'K9' as a commonly used abbreviation for 'canine', and therefore as a reference to dogs. Furthermore, I acknowledge that the term 'canine' may include other species, such as coyotes, wolves, and foxes, however, most dog owners will understand it as referring to dogs in the earlier mark, particularly as the goods sold under the mark are for dogs.¹³ I consider that the presence of the 'dog' device in the earlier mark and the 'paw print' device in the contested mark, reinforces the dog message. I also consider that the dominant word 'ALPHA', present in both marks, will convey the same concept, namely, the leading or most

¹³ BL O/1174/25, paragraph 32.

dominant member of a group. Finally, the word 'Gear' in the earlier mark has various meanings, including equipment or clothing, and when combined with 'Canine', and keeping in mind the goods under the mark, it will be seen as merely referring to 'stuff' for dogs. Therefore, both marks contain the same meaning stemming from the identical word 'ALPHA' and both marks convey a dog message, albeit the latter is descriptive of who the goods are ultimately for. Taking all of these factors into account, I find the marks to be conceptually similar to a high degree.

Distinctive character of the earlier trade mark

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

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

51. 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, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.
52. The earlier mark comprises of three ordinary dictionary words 'ALPHA Canine Gear' and a 'dog' device. Additionally, the mark is registered for goods that are for dogs, therefore, the 'Canine Gear' element and the 'dog' device in the mark are descriptive/allusive of those goods. I find that the distinctiveness of the earlier mark lies in the word 'ALPHA' which is not directly allusive or descriptive of the goods at issue. I therefore find the mark to be inherently distinctive to between a low and medium degree.
53. Although enhanced distinctive character has not been pleaded, I will turn to the evidence filed by the cancellation applicant to determine whether the distinctiveness of the cancellation applicant's mark has been enhanced through use. Its evidence does not offer any insight as to the size of the relevant market, nor the cancellation applicant's share of the market. There are no turnover figures to consider and only one invoice for £19.99 has been provided, as shown in **Exhibit LP3**. There is limited information on the number of UK consumers visiting the cancellation applicant's website or information on corresponding sales resulting from these views. There are no figures concerning the promotion of the earlier mark within the UK, nor the amount of investment made in such promotion. With regards to social media, although there is data relating to the number of followers, as shown in **Exhibit LP7**, I have no breakdown to show how many of the followers are UK consumers. Taking all of this into account, in my view the evidence is not sufficient to establish that the distinctiveness of the earlier mark has been enhanced through use.

Likelihood of Confusion

54. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. 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 and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

55. Earlier in the decision I found:

- the marks to be visually similar to a medium degree, aurally similar to at least a medium degree and conceptually similar to a high degree.
- the parties' goods to be identical and similar to a medium degree.
- the earlier mark has a low to medium distinctive character for the goods at issue. On this point, it is acknowledged that a weaker degree of distinctive character in an earlier mark does not preclude a finding of confusion.¹⁴
- the average consumer for the goods will be members of the general public who will select the goods primarily by visual means, although I do not discount an aural component. The average consumer will pay a medium degree of attention during the purchasing process.

56. The cancellation applicant has filed evidence to demonstrate confusion between the respective marks, as shown in **Exhibit LP4**. The exhibit shows the cancellation

¹⁴ See *L'Oréal SA v OHIM*, Case C-235/05 P

applicant's 'Alphacaninegear' Trustpilot page, which contains a comment dated 8 September 2024, referring to 'Alphak9'. The evidence also includes an undated Instagram review relating to a collar sold under 'alphacaninegear', with subsequent comments referring instead to 'alphak9'. While I have taken this evidence into account, it is limited in scope and consists of isolated examples in informal online contexts. I therefore attach limited weight to this evidence, and my assessment of likelihood of confusion is based primarily on a global and notional comparison of the marks and the goods at issue.

57. Taking all of the factors listed above into account, I acknowledge that both marks contain the identical word 'ALPHA', which I have found to be the distinctive element in both marks. The marks differ in that the earlier mark contains the additional words 'Canine Gear' and a large figurative 'dog' device and the contested mark contains the word 'K9' and a figurative 'paw print' device. The presence of the large dog device which I have found above to be a co-dominant if not distinctive factor is unlikely to be visually overlooked. Further, I acknowledge that the word 'Canine' in the earlier mark and the word 'K9' in the contested mark will be pronounced the same and both will be perceived as a reference to dogs, however, as the purchasing process is predominantly visual, this difference is likely to be noticed by the average consumer paying a medium degree of attention. Therefore, it is unlikely that the competing marks will be mistaken or misremembered for one another. Rather, the aforementioned differences are likely to be sufficient to enable consumers to differentiate between them, despite the overlap created by the commonality of the dominant word 'ALPHA'. In my view, the visual differences between the competing marks will mean that even those consumers paying a medium degree of attention are unlikely to mistake the marks for one another. This is notwithstanding the principles of imperfect recollection and interdependency. Accordingly, I find that there is no likelihood of direct confusion, even for identical goods.

58. I now consider whether there is a likelihood of indirect confusion. I note that in the recent case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*

(O/219/16), where he said at [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.

59. In *L.A. Sugar Limited v Back Beat Inc*¹⁵ Mr Iain Purvis Q. C. (as he then was), as the Appointed Person, explained that [my words in parentheses]:

‘17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] 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)”.

60. Even if the average consumer were to appreciate the differences between the marks and not directly mistake one for the other, I consider there to be a likelihood of *indirect* confusion. The differing elements “Canine” and “K9” will be perceived by the relevant public as common and generic references to dogs, with “K9” representing no more than an alternative way to express the word “Canine”. In my view, the substitution of “Canine” for “K9”, combined with the use of dog-related

¹⁵ Case BL O/375/10

imagery in both marks, is the type of variation that the average consumer would regard as a logical brand extension or a variant used by the same undertaking. Bearing in mind that it is not uncommon for a brand to introduce sub-brands or abbreviated forms of existing marks, I consider that the average consumer would assume that the marks originate from the same or economically linked undertakings. As for the word 'GEAR' in the earlier mark, this is a generic word used to describe the goods and would likewise be seen as part of a brand variation or brand extension. Accordingly, there is a likelihood of indirect confusion.

CONCLUSION

60. The application to invalidate UK trade mark registration number 3935262 under section 5(2)(b) of the Act is successful in its entirety. Subject to any appeal against my decision, the contested mark will be declared invalid. Under section 47(6) of the Act, the registration is deemed to have never been made.

COSTS

61. The cancellation applicant has been successful and is entitled to a contribution towards its costs. The cancellation applicant submitted a Tribunal Cost Pro Forma on 3 September 2025 setting out the costs in defending these proceedings. These consisted of:

Notice of Cancellation	1 hour
Preparing evidence/written submissions:	124 hours
Considering the other sides evidence and submissions:	35 hours, 15 minutes
Other expenses:	1 hour, 48 minutes

62. Where a party is represented, the registrar usually awards costs on a scale published in Tribunal Practice Notice ('TPN') 1 of 2023. As a matter of practice, litigants in person are asked to complete a costs proforma to ensure that the costs awarded do not exceed the amount spent on the proceedings which would undermine the Registrar's contribution-not-compensation practice in awarding costs. The number of hours claimed is not binding and is subject to an assessment of whether the time spent was reasonable in the circumstances of the case.

63. TPN 1/2023, Annex A, sets out the scale of costs applicable for tasks that are recoverable. It should be noted that a person who represents themselves, which is commonly referred to as a litigant in person, is entitled to a standard rate of £19 per hour for time reasonably spent on recoverable activities in line with part 46 of the Civil Procedure Rules.¹⁶ However, the amount awarded for tasks should not usually exceed that of the scale.

Pleadings

64. I accept that the cancellation applicant, as a litigant in person, would take longer to prepare and consider documents than a solicitor or trade mark attorney. Therefore, I consider it reasonable to award the cancellation applicant 1 hour for completing the TM26I and preparing a statement and 2 hours for considering the other side's statement, which also includes research time.

Gathering and Filing evidence and Submissions

65. The cancellation applicant has claimed 36 hours for gathering, formatting and submitting its evidence. The evidence in chief consists of a brief 4-page witness statement and 11 exhibits over 11 pages. The evidence contains images from websites and social media pages, a screenshot of an invoice and screen shots of product reviews which can easily be copied and pasted. There is also a screen shot of a Black Friday advertisement. The evidence also includes copies of email correspondence between the parties. Submissions were also filed during the

¹⁶ As the invalidation application was brought prior to 1 October 2025.

evidence rounds and total 9 pages. I consider it reasonable to award 4 hours. This includes time for researching and collating the evidence.

66. The cancellation applicant's evidence in reply consists of a 3-page witness statement and 9 exhibits over 9 pages. The evidence consists of images, including screen shots from websites, screenshots of messages from customers and social media posts. 7 pages of submissions were also filed. I consider it reasonable to award 4 hours. This includes time for researching and collating the evidence.

67. The cancellation applicant also filed written submissions in lieu of a hearing. I consider it reasonable to award 2 hours.

Considering the other sides evidence and submissions:

68. The cancellation applicant has claimed 35 hours and 15 minutes to consider the proprietors evidence and submissions. The proprietor's evidence consists of a 2-page witness statement and 8 exhibits over 14 pages. 3 pages of submissions were also filed. I consider it to be reasonable to award 2 hours to review and consider the evidence.

69. Taking account of this, I consider the following figures to be a fair and reasonable award of costs:

Preparing a statement and considering the other side's statement:	3 hours
Preparing evidence/written submissions during the evidence rounds:	10 hours
Considering the other sides evidence and submissions during the evidence rounds:	2 hours
Official fee:	£200

15 hours @ £19:

£285

Total:

£485

70. I have calculated the total using the standard rate for unrepresented parties; that being £19 per hour, in line with the Civil Procedure Rules, Part 46. I have multiplied this by the time I consider was reasonably spent on the invalidation. I have reduced the amount awarded for the preparation of evidence/written submissions and considering the other sides submissions to 12 hours as the evidence and submissions filed by both parties were relatively short. No award has been made for the other expenses requested by the cancellation applicant, as time spent on correspondence or contacting the IPO is not a recoverable activity in line with the activities set out at Annex A of TPN 1/2023.

71. I therefore order Nichola Hildred to pay Liam Paterson the sum of £485. 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 17th day of July 2026

Joanne Roberts
For the Registrar