

BL O/0640/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION No. 4116875
BY WAYNE ANTHONY ROOKWOOD
TO REGISTER THE FOLLOWING TRADE MARK:

Genesis'88

IN CLASSES 25, 35 AND 41

-AND-

THE OPPOSITION THERETO UNDER No. 600003643
BY URBAN ARTS ENTERTAINMENT GROUP LTD

Background and pleadings

1. On 26 October 2024, Wayne Anthony Rookwood (“**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 17 January 2025. Registration is sought for a variety of goods and services in Classes 25, 35 and 41 – these are set out in full at paragraph 19 of this decision.

2. On 7 April 2025, Urban Arts Entertainment Group Ltd (“**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 directed against all of the goods and services applied for and is based on the Opponent’s two registrations set out below. The Opponent relies on all of the goods and services for which its marks are registered. As the specifications relied upon for both earlier registrations are the same as each other, to avoid unnecessary duplication, I have set them out only once, at paragraph 19 of this decision.

“Mark 1”

Representation of the mark: **GENESIS LEGACY**

Type of mark:	word mark
Registration Number:	4043879
Filing date:	25 April 2024
Registration date:	19 July 2024
Classes:	25, 35, 41

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.

“Mark 2”

Representation of the mark:



Type of mark:	figurative
Registration Number:	4097608
Filing date:	9 September 2024
Registration date:	10 January 2025
Classes:	25, 35, 41

3. By virtue of their filing dates, the registrations upon which the Opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the earlier marks had not been registered for more than five years at the filing date of the contested application, they are not subject to the use conditions pursuant to section 6A of the Act, and accordingly, the Opponent may rely on all the goods and services for which its trade marks are registered without having to show any use at all.

4. The Opponent claims that the competing marks are similar and that the respective goods and services are identical, giving rise to a likelihood of confusion. In particular the Opponent alleges that the Applicant “*directly copied*” the specifications of its earlier registrations.

5. The Applicant filed a defence and counterstatement denying the claims. He denies copying the Opponent’s specifications, maintaining that his goods and services reflect his own established business activities.

6. This is an opposition to which the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013 applies, deemed a ‘Fast Track’ opposition which does not include the routine filing of evidence.² Neither party sought leave to file evidence nor

² Other than proof of use evidence, which is not a requirement in the present proceedings.

made any request to be heard. Only the Applicant elected to file submissions in lieu of a hearing. I therefore make this decision following a careful consideration of the papers before me.

7. Neither party has professional legal representation.

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8. In both his counterstatement and written submissions in lieu, the Applicant relies on an alleged history of use dating back to 1988, asserting that his brand originated in a project he co-founded with the opponent but which he continued alone following the Opponent's departure in late 1989.

9. He submits that in 1998, *"Virgin Books published my book Class of 88 (still on sale 2025). I describe creating the name Genesis on one page (the Opponent has publicly admitted I came up with the brand name) and designing the logo on another page. We actually both chose the logo (Genesis Face) as it fitted with my chosen brand name Genesis."*³

10. He submits that since the Opponent's departure, he has developed his brand through events, publications, merchandise, broadcasting and artistic works, thereby alleging that he has generated goodwill and distinctiveness in his brand, Genesis'88.

11. He further asserts that he has earlier trade mark rights, relying on his UK registered trade mark number 4071938, which he refers to as the "Face" logo – it has a filing date of 4 July 2024 and it became registered on 4 October 2024 (I note that its filing date is earlier than the Opponent's Mark 2 filing date of 9 September 2024, but later than Mark 1's filing date of 25 April 2024). He submits that his present application for Genesis'88 is a natural evolution of his existing registered right.

12. In addition, the Applicant makes a number of allegations of bad faith and misconduct against the Opponent, including plagiarism, opportunistic acquisition of domain names, disruption of his commercial arrangements and defamatory conduct, and contends that the Opponent's use of its own branding is comparatively recent. On

³ Applicant's counterstatement, paragraph 4 of Part B.

that basis, he invites me to reject the opposition and allow the application to proceed to registration.

Preliminary issues

13. It is apparent from the Applicant's submissions that he 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*":

"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."

14. Even if the Applicant shows he owns a trade mark right which predates the Opponent's registrations, this is not a viable defence to the present opposition. As no application has been made to invalidate the Opponent's earlier registrations, I must proceed on the basis that the Opponent's earlier marks are valid earlier marks and confine my assessment to the issues arising under section 5(2)(b) of the Act.

15. The same applies to the Applicant's allegations of bad faith. Such allegations amount, in substance, to a challenge to the validity of the Opponent's earlier registrations and cannot be relied upon as a defence in these proceedings. In the

absence of any application to invalidate the earlier registrations on that basis, I must treat them as valid earlier marks.

16. Furthermore, the Applicant's allegations of misconduct, including plagiarism, opportunistic acquisition of domain names, disruption of his commercial arrangements and defamatory conduct, fall outside the scope of the matters I am required to determine in these proceedings. If the Applicant wishes to take those allegations further, he must do so through the appropriate channels. They are not matters which provide a defence and/or counterclaim to a trade mark opposition under section 5(2)(b) of the Act.

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 and services

19. The competing goods and services are set out in the table below. As the specifications relied upon for the two earlier marks are the same, a single comparison with the Applicant's specification is sufficient.

Class	Opponent's goods and services Trade mark registration numbers: 4043879 & 4097608	Applicant's goods and services
25	Clothing; footwear; headgear.	Clothing; footwear; headgear.
35	Advertising, marketing; promotion services; publicity; online ordering services; retail services and wholesale services connected with the sale of recorded content, media content, recorded media, records (sound recordings), computer software, CD ROMs, DVDs, audio and audiovisual recordings, pre-recorded videos, electronic publications, podcasts, mobile apps, downloadable publications, electronic publications, lanyards for keys, lapel pins, medals, bracelets, charms, clocks and watches, key rings, printed matter, printed publications, stationery and educational supplies, books, journals, paper, notepaper, stickers, transfers, pens, pencils, greetings cards, calendars, photographs, posters, travelling bags, bags, luggage, holdalls, rucksacks, purses, wallets, umbrellas, parasols, mugs, glasses, drinking vessels and barware, parts and fittings for all the aforesaid goods, food and drinks, clothing, footwear, headgear; business management; business assistance; business and commercial information; business assistance and advice relating to	Advertising, marketing; promotion services; publicity; online ordering services; retail services and wholesale services connected with the sale of recorded content, media content, recorded media, records (sound recordings), computer software, CD ROMs, DVDs, audio and audiovisual recordings, pre-recorded videos, electronic publications, podcasts, mobile apps, downloadable publications, electronic publications, lanyards for keys, lapel pins, medals, bracelets, charms, clocks and watches, key rings, printed matter, printed publications, stationery and educational supplies, books, journals, paper, notepaper, stickers, transfers, pens, pencils, greetings cards, calendars, photographs, posters, travelling bags, bags, luggage, holdalls, rucksacks, purses, wallets, umbrellas, parasols, mugs, glasses, drinking vessels and barware, parts and fittings for all the aforesaid goods, food and drinks, clothing, footwear, headgear; business management; business assistance; business and commercial information; business assistance and advice relating to

	franchising; consultancy, information and advisory services relating to all the aforesaid services.	franchising; consultancy, information and advisory services relating to all the aforesaid services.
41	Entertainment; music production; organization, provision and production of musical and live entertainment; video, audio, audio-visual, film and documentary production; recording studio services; television and radio production; entertainer services; music and night club services; sporting and cultural activities; organisation of parties; organization and hosting of awards and award ceremonies; organisation of festivals; recreational camp services; publishing; arranging and conducting conferences, seminars, exhibitions and competitions; arranging and hosting musical, entertainment, educational, training, coaching, sports, and cultural events; consultancy, information and advisory services to all the aforesaid services.	Entertainment; music production; organisation, provision and production of musical and live entertainment; video, audio, audio-visual, film and documentary production; recording studio services; television and radio production; entertainer services; music and night club services; sporting and cultural activities; organisation of parties; organization and hosting of awards and award ceremonies; organisation of festivals; recreational camp services; publishing; arranging and conducting conferences, seminars, exhibitions and competitions; arranging and hosting musical, entertainment, educational, training, coaching, sports, and cultural events; consultancy, information and advisory services to all the aforesaid services.

20. The Applicant's goods and services are all self-evidently identical to those relied upon by the Opponent, as each term in the application also appears in the Opponent's specification.

The average consumer and the nature of the purchasing process

21. 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.⁴ The word 'average' merely denotes that the person is typical,⁵ which in substance means that they are neither deficient in the requisite characteristics of being well

⁴ *Lloyd Schuhfabrik Meyer*, Case C-342/97.

⁵ *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

informed, observant and circumspect, nor top performers in the demonstration of those characteristics.⁶

22. 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;
- (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

⁶ *Schutz (UK) Ltd v Delta Containers Ltd* [2011] EWHC 1712, paragraph 98

must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

23. The relevant average consumer will predominantly be a member of the general public, although I do not rule out that, for certain services, the average consumer may also be a business customer, for example in relation to “business management”. Given the nature of the goods and services, the average consumer, whether a member of the general public or a business customer, is likely to pay at least a medium degree of attention when selecting them, as they will wish to ensure that they are suitable for their needs and requirements. Where the services involve a greater degree of planning, commercial input or reliance on the provider’s expertise, such as business management services or the organisation of festivals, the level of attention is likely to be medium to high. That is because such services are likely to require a more careful consideration to meet the consumer’s requirements.

24. The goods will typically be selected via retail stores, catalogues and their online equivalents and the services will typically be selected online, from brochures, or after seeing signage on the service provider’s premises. 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, although even where the goods and services are selected orally, the consumer is still likely to have viewed the marks first before asking for them.

Comparison of marks

25. 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*,⁷ 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

⁷ Case C-591/12P, at paragraph 34.

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

26. 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.

27. The marks being compared are shown below:

Opponent's marks	Applicant's mark
<u>Mark 1</u> GENESIS LEGACY	
<u>Mark 2</u> 	Genesis'88

28. Whilst both earlier marks contain the wording GENESIS LEGACY, Mark 2 contains an additional figurative element and a degree of stylisation of the letters which serve only to increase the differences between the marks. It therefore does not represent the Opponent's strongest case (bearing in mind that the specifications of both earlier marks are identical). I shall accordingly proceed by assessing the likelihood of confusion on the basis of Mark 1 (which represents the opponent's best case) and will return to consider Mark 2 only if necessary.

Overall impression

29. As ‘word marks’, the overall impression of Mark 1 and the Applicant’s mark lies in the words, and numbers, of which they comprise. However, that is not to say that each component in a word mark has equal weight in the overall impression.

30. Taking the Opponent’s Mark 1 first, it consists of two words, GENESIS followed by LEGACY. The word GENESIS refers to the origin of something, or the point at which it comes into existence.⁸ The word LEGACY means something inherited from, or handed down by, the past.⁹ In my view, GENESIS is the more distinctive element of Mark 1. It is an arbitrary word, not in common use, with a meaning that is unlikely to be known by all average consumers, and is neither descriptive nor allusive of the relevant goods and services. Further, it appears at the beginning of the mark, where it is likely to make a stronger impression on consumers.¹⁰ By contrast, LEGACY is a more familiar English word, the meaning of which will be readily understood by the average consumer. In the context of a trade mark, it is likely to be perceived as a reference to a brand’s heritage or history. It may, for example, suggest a return to a brand’s roots, identity or traditions in relation to a particular range of goods or services. Although LEGACY is not negligible, it is less distinctive than GENESIS and carries less weight in the overall impression.

31. Overall, GENESIS is the dominant element of Mark 1, owing to its greater distinctiveness and its position at the beginning of the mark.

32. As regards the Applicant’s mark, it consists of the word GENESIS followed by an apostrophe and the number 88. For the reasons already given in relation to Mark 1, GENESIS is a distinctive element. By contrast, the apostrophe and number 88 are less distinctive. The ‘88 element is likely to be perceived either as an abbreviation of the year 1988, or simply as the number 88. Either way, it is not particularly distinctive *per se* and carries less weight than GENESIS in the overall impression.

⁸ See the definitions of GENESIS in the online versions of the Oxford English Dictionary and Collins English Dictionary, current as at the publication date of this decision.

⁹ See the definitions of LEGACY in the online versions of the Oxford English Dictionary and Collins English Dictionary, current as at the publication date of this decision.

¹⁰ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, paragraph 81.

33. Overall, the dominant element of the Applicant's mark is GENESIS, owing to its greater distinctiveness and its position at the beginning of the mark.

Visual comparison

34. The fact that Mark1 is presented entirely in capitals and the Applicant's in title case does not constitute a point of visual distinction, since both may notionally be presented in upper case, lower case, or a combination of the two because word marks are "*not limited by any features such as fonts or capitalisation appearing on the Register*".¹¹

35. Both marks have the identical first word 'GENESIS'. The word LEGACY and the apostrophe 88 are points of visual difference. Notwithstanding the visual differences created by these elements, given my earlier finding that GENESIS carries greater weight in both marks, I consider the marks to be visually similar overall to a medium degree.

Aural comparison

36. The marks share the identical pronunciation of the word GENESIS. Points of aural difference arise from the presence of LEGACY and '88, the latter being pronounced simply as 'eighty-eight', with the apostrophe having no effect on pronunciation.

37. Notwithstanding the aural differences created by LEGACY and '88, the shared pronunciation of GENESIS is significant, particularly given the greater weight it carries in both marks. Taking everything into account, I consider the marks to be aurally similar overall to a medium degree.

Conceptual comparison

38. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer.¹² I have already noted that the word GENESIS refers to the origin of something or the point at which it comes into existence. Whilst I consider that a significant proportion of average consumers will be aware of that meaning, rendering the marks conceptually identical as far as that word is concerned, I also consider that

¹¹ *HERNO S.p.A. v Miss Sparrow Ltd*, BL O/954/22, at [15].

¹² 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.

an equally significant proportion will not. The latter may either perceive GENESIS as an invented word or recognise it as a familiar English word whose meaning they do not know. In either circumstance, the word will convey no meaning to them and they will derive no conceptual message from it, rendering the marks conceptually neutral as far as that word is concerned.

39. I have already noted that the word LEGACY means something inherited from, or handed down by, the past, a meaning which will be known to the average consumer. In the context of the goods and services at issue, it is likely to be understood as a reference to a brand's heritage or history. Whilst that is not a particularly distinctive concept, being one that could equally apply to many brands, it nonetheless has no counterpart in the contested mark and therefore represents a conceptual point of difference between the marks, albeit a weakly distinctive one.

40. An apostrophe followed by a number is commonly perceived as an abbreviation for a year, with the apostrophe replacing omitted digits. Accordingly, the '88 element in the Applicant's mark is likely to be perceived as an abbreviation of the year 1988. In the context of a brand, consumers will commonly perceive the inclusion of a year as a reference to the year in which that brand was established and derive that conceptual message from it, which is not a particularly distinctive concept. Alternatively, it is likely to be perceived merely as a number, which is likewise not particularly distinctive *per se*, given that numbers are commonly used as product codes, model numbers, sizes, indicators of a specific line of goods or services, or other range identifiers. Either way, that element has no counterpart in the contested mark and therefore represents a conceptual point of difference between the marks, albeit a weakly distinctive one.

Distinctive character of the earlier trade mark

41. 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.¹³

¹³ *Sabel v Puma*.

42. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,¹⁴ 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).”

43. Whilst distinctiveness is assessed by reference to the mark as a whole, simply stating the overall level of distinctiveness of the earlier mark is not sufficient, it is the distinctive character of the component or components that are similar between the marks that is of particular relevance.¹⁵ In other words, it is necessary to determine in what the distinctive character of the earlier mark lies, so that the analysis can focus on those components that are common to, or similar between, the marks at issue. Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

¹⁴ Case C-342/97.

¹⁵ *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, [39] – [40].

44. 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, for example, an invented word which has no allusive qualities. Whilst the inherent distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, no evidence of use has been filed and therefore I have only the inherent position to consider.

45. For the reasons already stated, it is the distinctiveness of the word GENESIS which is particularly relevant, since it is that word which the competing marks have in common. If the average consumer perceives GENESIS as an invented word, its distinctive character will be high. If, however, it is recognised as an existing English word, I nevertheless do not consider that its distinctive character is thereby reduced to a medium degree. As the Appointed Person observed in *Janus* (BL O/0558/25), at paragraph 34:

“Ms Watkinson [...] submits that if *Janus* was not an invented word it would necessarily be less distinctive than if it were an invented word. I do not accept this submission. There is no reason why arbitrary marks (ie existing words used as trade marks) cannot be inherently distinctive to a high degree or why invented (fanciful) marks cannot have a lower degree of distinctiveness. The level of inherent distinctiveness will depend on the mark in question and its relationship to the goods or services.”

46. Although GENESIS is an existing, dictionary-defined English word, it is arbitrary in relation to the relevant goods and services, being neither descriptive nor allusive of them. Even where its meaning is understood, that meaning bears no obvious relationship to those goods and services. Taking those factors into account, even where GENESIS is recognised as an existing English word, as opposed to an invented one, it nonetheless possesses a medium to high degree of inherent distinctiveness.

47. As a matter of completeness, even when the earlier mark is considered as a whole, my assessment of distinctiveness is not altered. LEGACY does not materially add to the mark’s overall distinctiveness, since it is an ordinary English word conveying a concept that could equally apply to any brand. The distinctiveness of the earlier mark as a whole therefore continues to lie principally in GENESIS and, depending on perception, remains either high or medium to high overall.

Conclusions on Likelihood of Confusion

48. 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.¹⁶ 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.¹⁷

49. 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.¹⁸ 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.¹⁹

50. 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 economically linked undertaking.²⁰ 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.²¹ In *L.A. Sugar Limited v By Back Beat Inc*,²² Mr Iain Purvis Q.C.,

¹⁶ *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, Case C-342/97, paragraph 27

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

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81

¹⁹ See paragraph 33 of the Appointed Person's decision in Case No. O/049/17, (*Rochester Trade Mark*).

²⁰ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, paragraph 10

²¹ *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.

²² Case BL-O/375/10.

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).”

51. I summarise my findings as follows:

- (1) the competing goods are identical;
- (2) the average consumer is a member of the general public and/or a business customer, who will pay at least a medium degree of attention when selecting the goods and services, rising to a medium to high degree in respect of certain services which require more careful consideration during the selection process;
- (3) the selection process is predominantly visual, although I do not discount an aural component;
- (4) the overall impression of both marks is dominated by the word GENESIS, which is the most distinctive component of each mark and appears at the beginning, where consumer attention is likely to be focused;
- (5) the common component, GENESIS, is visually and aurally identical. Overall, the marks are visually and aurally similar to a medium degree;

- (6) the marks are either conceptually identical as far as GENESIS is concerned or conceptually neutral. The concepts conveyed by the word LEGACY and the apostrophe 88 represent points of conceptual difference between the marks. However, the concept conveyed by LEGACY is not particularly distinctive; and as regards '88, neither the concept of a founding year, nor that conveyed by a mere number is particularly distinctive;
- (7) with regard to the distinctiveness of the earlier mark, I have found that GENESIS, being the element common to the competing marks, is either highly distinctive or distinctive to a medium to high degree, depending on perception. On either view, LEGACY does not alter the distinctiveness of the mark when considered as a whole.

52. Taking all the above factors into consideration, and allowing for imperfect recollection, whilst bearing in mind the principle of interdependency, I find that the average consumer will simply mistake one mark for the other, and will therefore be directly confused as to the origin of the goods and services as a result, particularly as those goods and services are identical.

53. Alternatively, even if the average consumer recognises the difference between the marks created by LEGACY and '88 they will nonetheless be indirectly confused. This is because those elements are likely to be perceived as variations within, or additions to, the GENESIS brand, rather than as indicating that the identical goods and services originate from different undertakings. LEGACY may be understood as denoting a sub-brand or brand extension, for example a heritage or legacy range within the GENESIS brand, while '88 may be seen as stemming from marketing considerations, suggesting that the brand has origins dating back to 1988 and thereby promoting the longevity or heritage of the GENESIS brand, or might indicate a specific line of goods and services. In those circumstances, the differences between the marks are likely to be attributed to marketing considerations or to sub-branding arising from range segmentation, rather than to any difference in trade origin.

54. For completeness, I note that even if GENESIS were inherently distinctive only to a medium degree, the outcome would be the same because it remains more distinctive than the non-coinciding elements. Accordingly, the differences between the marks would still be insufficient to avoid a likelihood of confusion.

OUTCOME

55. The opposition under section 5(2)(b) of the Act is successful in its entirety. Subject to any appeal, contested trade mark application number 4116875 shall be refused registration.

COSTS

56. The Opponent has been successful and would ordinarily be entitled to an award of costs. However, as the Opponent had not instructed professional representatives, they were invited to indicate whether they intended to make a request for an award of costs by filing a costs pro-forma indicating accurate estimates of the number of hours spent on a range of given activities relating to bringing the proceedings. It was made clear by the Tribunal's official letter dated 25 February 2026 that, if the pro-forma was not completed, no costs, other than official fees would be awarded. The Opponent did not return a completed pro-forma to the Tribunal and, on this basis, no costs are awarded other than the official fee of £100 for the filing of the Form TM7F.

57. I therefore order Wayne Anthony Rookwood to pay Urban Arts Entertainment Group Ltd the sum of **£100**. 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 22nd day of July 2026

Daniela Ferrari
For the Registrar