

BL O/0696/26

TRADE MARKS ACT 1994

BEFORE THE APPOINTED PERSON

IN THE MATTER OF International
Registration No. 1736576 in the
name of Glossy Boys Pty Ltd (“the
Respondent”)

AND IN THE MATTER OF
Opposition No. 443571 thereto by
Beauty Trend Holding GmbH (“the
Appellant”)

DECISION

INTRODUCTION

1. This appeal concerns Decision No. O/0246/25 of Hearing Officer L Fayter, dated 18th March 2025 (“the **Decision**”). The Decision followed written submissions from both parties submitted in lieu of an oral hearing.
2. The Decision relates to the opposition no. 443571 by the Appellant to international registration No. 1736576 in the name of the Respondent for the word mark GLOSSY BOYS (the “**IR**”). The holder sought protection for the IR in relation to goods in Class 3 namely “*Nail polish; nail varnish; nail glitter; nail varnish removers; nail manicure products (preparations); nail art stickers; nail preparations (cosmetics); cosmetics; cosmetic kits.*”
3. The Appellant opposed the IR in the UK under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the **TMA 1994**”). The Appellant relied upon its UK trade mark

(EU) registration no. 909785809 and 910128941 for the word mark GLOSSYBOX (“the **Earlier Marks**”).

4. The Appellant was required to provide proof of use of the Earlier Marks. The Hearing Officer found that the Appellant had furnished proof of use in respect of *retail services in relation to cosmetics* in class 35 only. That proof was provided in the form of a witness statement from a Mr. Foster. Mr. Foster is the Deputy General Counsel of a company called THG Plc. THG is part of the same group of companies as the Appellant. Mr. Foster’s evidence states that he has “full and complete access” to the records of the Appellant.
5. The Appellant also relied upon the evidence of Mr. Foster to support a submission that the Earlier Marks had an enhanced distinctive character. The Hearing Officer rejected that submission. The opposition under sections 5(2)(b) and 5(3) of the TMA 1994 failed.

GROUND OF APPEAL

6. On Appeal, Ms. Chantrelle (who appeared on behalf of the Appellant) sought to overturn the Decision based on the following grounds:
 - 6.1. Ground 1: the Hearing Officer erred in her assessment of whether the Earlier Marks benefitted from an enhanced distinctive character by failing to consider all the evidence submitted.
 - 6.2. Ground 2: the Hearing Officer erred in her assessment of whether there was a likelihood of direct confusion, because:
 - (a) she had erred in her assessment of an enhanced distinctive character, that error made its way into her assessment of the likelihood of confusion; and/or
 - (b) she placed too much importance on the words “BOX” and “BOYS” which she held gave the marks a clear and distinct

conceptual hook to assist in differentiating between the marks;
and/or

- (c) she failed to properly take into account the principle of imperfect recollection.

6.3. The Hearing Officer erred in her assessment of indirect confusion because:

- (a) she had erred in her assessment of an enhanced distinctive character, that error made its way into her assessment of the likelihood of indirect confusion, and
- (b) the Hearing Officer's reasoning relied upon her finding that (1) none of the evidence provided by the opponent at exhibit MF7 shows use of the mark "GLOSSY GIRLS" and (2) the exhibited examples of their current brand extensions being "GLOSSYBOX" to "GLOSSYBOX MEN" and "GLOSSYBOX WOMEN" all contain the word "GLOSSYBOX" within them. However, the evidence showed to the contrary that GLOSSY GIRL was in fact used. It followed that the basis of the Hearing Officer's reasoning was flawed.

- 7. The Appellant averred that each of the grounds amounts to an error of principle which constitutes an identifiable flaw in the judge's treatment of the question to be decided which undermines the cogency of the conclusion.

THE STANDARD OF REVIEW

- 8. There was no dispute as to the principles which guide how I should approach this appeal. These principles are well understood and are discussed in detail in *TT Education Ltd v Pie Corbet Consultancy* O/017/17 at [52], *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and

Iconix v Dream Pairs [2025] UKSC 25. Two aspects of these principles are particularly relevant to this appeal.

9. First, I note that this appeal concerns the Hearing Officer's decisions on the facts. With that in mind I remind myself of the approach in such a case, the essence of which was pithily summarized by Mr. Thomas Mitcheson KC, sitting as the Appointed Person, in *SOCIAL WORK NEWS* (O/00/50/24) at [13], as follows:

To paraphrase, an appeal should only be allowed where the decision of the lower court was "wrong". Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible". In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

10. Second, I note that a key plank of the Appeal is based on the assertion that the Hearing Officer failed to consider, and/or failed to refer, to relevant evidence. In relation to this contention, I remind myself of two specific paragraphs of the judgment of Joanna Smith J in *Axogen*, namely paragraphs (24)(viii) and (ix) which state as follows:

- (viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
- (ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).

GROUND 1

11. Ground 1 concerns the Hearing Officer's assessment of whether the Earlier Marks had an enhanced distinctive character.
12. The Hearing Officer found that:
 - 12.1. during 2017 – 2022, the Appellant made sales in the UK under its GLOSSYBOX brand of c. £99.7 million, and
 - 12.2. the Appellant used the GLOSSYBOX on the retail of cosmetic subscription boxes, in respect of which type of boxes it was the number one supplier in the EU in 2019 and number one supplier in the UK in 2021.
13. These factors, the Appellant submitted provide a firm basis for concluding that the Earlier Marks had an enhanced distinctive character.
14. The problem for the Appellant is that the evidence it relied upon for its c. £99.7 million sales related both to products that were, for the purposes of this opposition, relevant to the question of enhanced distinctiveness (e.g. cosmetics) and to products whose sales it did not rely upon for that purpose (e.g. bags, clothes, mugs). Furthermore, despite apparently having “full and complete” access to the Appellant's records, Mr. Foster's evidence does not attempt to prove what proportion of the sales related to relevant sales under the Earlier Marks. The Hearing Officer addressed this point at [68] of the Decision as follows:

68. Mr. Foster states that the above table contained in paragraph 22 of this decision shows the opponent's sales in the UK “for GLOSSYBOX” for the years 2017 to 2022 which amounted to £99,732,000. This is the opponent's strongest evidence, especially as this figure is clearly a very significant sum of money, which is in relation to the retail of cosmetics, which I consider is likely to be large market. However, the glossybox website evidence in **exhibit MF5** shows that GLOSSYBOX branded mugs, clothing and bags are also offered for sale by the opponent. Moreover, in paragraph 3 of his witness statement, Mr. Foster states that

“in 2022 the UK sales of the GLOSSYBOX business was over £17 million and in 2021 UK specific sales were over £28 million”. This reflects the UK sales figures for the years 2021 and 2022 contained in the aforementioned table. Thus, taking all of the above into account, I find it reasonable to infer that the £99,732,000 turnover generated by the opponent was not just from its retail services in relation to cosmetics (that being its beauty subscription boxes) but that it most likely includes the sales made from its non-cosmetic GLOSSYBOX branded items.

15. The Hearing Officer then considered the cogency of the other evidence of use of the Earlier Marks (e.g. advertising and online presence) and having done so concluded at paragraph 75 of the Decision that she did not consider the evidence adequate to establish an enhanced distinctiveness in the Earlier Marks.

The Appellant's Overarching Submission

16. The core of the Appellant's submissions, as they were put to me orally, was that no reasonable Hearing Officer, who considered all the relevant evidence, could have rejected the submission that the Earlier Marks had an enhanced distinctiveness.
17. The Appellant submitted in particular that the taking the evidence together, the only conclusion a reasonable Hearing Officer could have reached was:
 - 17.1. the bulk of the £99.7 million sales referred to by Mr. Foster related to products relevant to the establishment of an enhanced distinctive character, and
 - 17.2. it followed that given the sums involved (i.e. the bulk of £99.7 million), there was necessarily an enhanced distinctive character.
18. The Appellant submitted that the reason the Hearing Officer had failed to reach the latter conclusion was because the Hearing Officer ignored relevant evidence entirely. Thus, Ms Chantrielle, stated that:

MS. CHANTRIELLE: The first one, like I said, in very brief summary is about enhanced distinctiveness. In essence, what we say is her assessment, there was an error in the sense that she failed to take into account relevant material. This is not a question of how much weight she placed on material, we are not saying she did not place enough weight on this or enough weight on that, the issue here

is that there is clear, relevant material that just was ignored, and that relevant material, in and of itself, should have been taken into account, which is the first error. But also, as a result of not taking that into account, she erred in her conclusions and her inferences that were drawn in respect of other evidence

19. I must assume that the Hearing Officer took into account all the evidence unless there is good reason to believe to the contrary (see *Axogen* paragraph 24(ix)). It follows the fact that a Hearing Officer failed to refer to a particular passage of the evidence, or has only done so briefly, will usually not be sufficient on its own to provide such good reason (and see also paragraph 24(viii) *Axogen*). Something more is required.
20. The evidence which the Appellant alleges that the Hearing Officer ignored was as follows:
 - 20.1. six articles published in the press concerning the use of the GLOSSYBOX brand for cosmetics;
 - 20.2. evidence of advertising in the UK, including evidence of the size of the UK following of the Appellant's social media insofar as that related to GLOSSYBOX branded cosmetics, and
 - 20.3. evidence showing, the Appellant submitted, very limited sales of mugs, clothing, and bags.
21. The first point I note is that the Hearing Officer clearly did consider all this evidence in the context of non-use (see Decision, paragraphs 9, 10, 17-28 and 35-36). In particular, she referred to it, as follows:
 - 21.1. the press articles referred to in para 21.1 above at paragraph 18 (where they are referred to as press releases);
 - 21.2. evidence relating to the Appellant's advertising and social media presence at paragraphs 19 – 20 and 28, and

- 21.3. the evidence relating to the sales of Mugs and other non-relevant products at paragraph 21.
22. Ms Chantrielle did not suggest otherwise and conceded in oral submission that it was to be assumed that the Hearing Officer had read all materials presented to her, including the evidence she submitted was ignored in the context of considering whether the Earlier Marks possessed an enhanced distinctiveness. The Appellant's submission therefore comes down to the very narrow assertion that despite having read the relevant material, and referred to it in relation to non-use, the Hearing Office failed to consider that evidence when assessing enhanced distinctiveness.
23. When considering enhanced distinctiveness the Hearing Officer expressly considered:
- 23.1. UK sales under the GLOSSYBOX brand (see paragraphs 68 -70 and see also paragraph 92 in relation to the question of sales of mugs and non-relevant products);
- 23.2. UK advertising spend and online presence (see paragraphs 70-73);
- 23.3. THG (i.e. not the Appellant's) market share in cosmetics in the UK (paragraph 74).
24. It follows that the Hearing Officer did not refer expressly to the press articles. They were however referred to (as I have said above) earlier in the Decision at paragraph 18 as follows:

Examples of press releases dated between 7 August 2020 and May 2022 have also been provided at **exhibit MF16 to MF20** which shows examples of their subscription boxes which have been produced in collaboration with other brands, such as Elemis and Huda Beauty. These boxes therefore only contain Elemis and Huda branded cosmetics. Moreover, the opponent's evidence shows that it has a GLOSSYBOX men's grooming subscription box, and a GLOSSYBOX girls box which specifically target those different markets.

25. Taking these matters together, I reject the submission that the Hearing Officer failed to consider the evidence relied upon by the Appellant on Appeal when addressing the question of enhanced distinctiveness. In my mind it is clear that she did have all the relevant evidence in mind. The fact that the press articles were not expressly referred in the context of enhanced distinctiveness does not indicate, on its own, that she did not consider them.
26. Furthermore, it is plain from her reference to them in the context of non-use that she gave them comparatively little weight (as she was in my view entitled to do – for which see also below). In those circumstances the fact that she did not refer to them a second time, does not indicate an error of principle. As *Axogen* at paragraph 24(viii) makes clear, the Hearing Officer was not required to discuss every argument or piece of evidence relied upon by the Appellant.
27. I turn now to the remaining submissions made under this ground by the Appellant. Given what I have found (and despite the Appellant’s submission I have quoted above), these submissions can really go only to weight.

The Newspaper Articles

28. The Appellant submitted that these articles provided compelling evidence that the bulk of its trade related to cosmetics.
29. There were six online articles in total, two from the Mirror, one from the Sun, one from the Times, one from list.co.uk, and one from Heatworld. They were published between September 2019 and May 2022. No evidence of circulation was provided.
30. The Appellant relied upon the article for two reasons:
 - 30.1. to bolster its case that the GLOSSYBOX brand had been advertised nationally in relation to cosmetics, and
 - 30.2. that the content of the articles demonstrated that the GLOSSYBOX brand was well known nationally as a cosmetics brand.

31. When considering the weight given to these articles by the Hearing Officer the following points, albeit not mentioned by her, are of note:
- 31.1. the six articles are said to be examples of press coverage. However, Mr Foster gives no indication of the total scale of press coverage;
 - 31.2. there was no circulation evidence. In relation to this, the Appellant submitted that four of the six articles, namely those from the Mirror, Sun and Times could be assumed to be of significant national circulation. There is force in this submission, but it can't be taken too far. For example, as Mr Head who appeared for the Respondent pointed out, the Times edition relied upon appeared to be an online edition directed to North London only, and
 - 31.3. it was unclear whether the two articles in the Mirror were truly independent comment on the Appellant's brand as opposed to articles placed or approved by the Appellant (they were written by a "Senior Content Commercialisation Editor" and an "Affiliates Development Editor").
32. Finally, on their face these articles do not assist in proving whether the Appellant also had a significant business under the GLOSSYBOX brand in non-cosmetic goods. They are therefore of very limited (if any) assistance in proving that the bulk of the Appellant's sales were in cosmetics.
33. For all these reasons if, which I am prepared to assume, the Hearing Officer gave little weight to these articles, then it seems to me she was entitled to do so.

Evidence of Sales of Non-Relevant vs Relevant Goods

34. The Appellant criticized the Hearing Officer for not finding that the evidence demonstrated that only a small part of its business related to non-relevant goods. In particular it said that the two exhibits that show non-relevant goods demonstrate that they are only of minor importance to the Appellant's business.
35. This is in my view a bad point. Mr. Foster does not state that non-relevant goods are a small part of the Appellant's business. Nor can this be derived from the two

exhibits MF5 and MF6 alone, which at best are a snapshot of the Appellant's business. It is, in my view, therefore unclear on the basis of Mr Foster's evidence what percentage of its business is not related to cosmetics from these alone.

Advertising and Online Presence/Instagram

36. The Hearing Officer addressed the Appellant's advertising and online presence (through its website and Instagram) at paragraphs 71-73 of the Decision as follows:

71. I have also been provided with the opponent's spend for sponsored advertising and PPC marketing in the UK between 2017 and 2022, which amounted to, in total £3,842,128. This is supported by the influencer Instagram posts from the opponent's "glossyboxuk" Instagram page contained in **exhibit MF12**. Whilst I bear in mind that the name of the page indicates that it is for UK consumers, Instagram is a platform that can be accessed worldwide, and thus any consumer could follow this page, even if they were not from the UK. Nonetheless, even if I were to assume that all of its followers were from the UK, I note that from the exhibited posts provided, they only gained between 200 to 1,342 likes each, which I consider to be a relatively low level of engagement, especially when compared to the opponent's above UK sales figures.

72. I note that within their evidence the opponent has also provided an influencer contract between themselves and Molly Mae Hague. This is supported by an exhibited post she made on her Instagram dated April 2020. Whilst the description of the post mentions "GLOSSYBOX", the post itself does not show the opponent's subscription box, or any GLOSSYBOX branded goods. It only shows a photo of her face, and the description of the post does not make it entirely clear as to what "GLOSSYBOX" goods and/or services she was advertising.

73. I have not been provided with any other advertising evidence, such as examples of the opponent's PPC marketing, and therefore I do not know what the UK consumers would have been exposed to (i.e. what the adverts looked like, if they used the mark and on what goods and services etc.). The opponent has also provided its google analytics for its GLOSSYBOX website, which in 2018 and 2019, 250,000 users were engaging with the site, and in 2020 to 2023, 500,000 users were engaging with the GLOSSYBOX website. While these figures lead me to conclude that the GLOSSYBOX brand reaches a notable audience in the UK, again without any invoice evidence, I am unable to determine the geographical spread of the mark across the UK.

74. I note that Mr Foster states that in 2020, THG (which the opponent is a subsidiary of) held 36% of online prestige in the beauty market in the UK, in 2019 they held 21%, in 2018 they held 20% and in 2017 they held 17%. I note that these are significant percentage sizes. However, these percentages will not only cover both the beauty subscription brands that THG owns, that being GLOSSYBOX and Lookfantastic, it will also encompass THG's other beauty brands that they own, such as ILLAMASQUA, GROW GORGEOUS, Eyeko London, Christophe Robin, AMELIORATE, SkinStore and BEAUTY EXPERT. Therefore, as Mr Foster has not provided a breakdown of the above percentages, I am unable to determine what the opponent's market share was for GLOSSYBOX only. Lastly, whilst in the THG annual report and accounts for 2021 it states that GLOSSYBOX was rated the number 1 beauty subscription box in the UK, I am still unable to determine from this what kind of market share the opponent would have had for the retail of cosmetics.

37. These findings are criticised by the Appellant as follows:

37.1. having found that the GLOSSYBOX website reaches a notable audience in the UK, the Hearing Officer was wrong to note that there was no information about how its audience was distributed nationally;

37.2. the Hearing Officer was wrong to place weight on the number of likes received on Instagram, as opposed to the very much larger number of followers (which she found could not all be assumed to be from the UK), and

37.3. the Hearing Officer was wrong to place weight on the fact that the material relating to the Molly May Hague collaboration failed to show any of the Appellant's branded cosmetics boxes. Instead, the Appellant said that the use of the words "loving this month's @glossboxUK" was a) plainly a reference to the Appellant's subscription product and b) indicated that the cosmetic boxes were so well known that nothing further was needed to identify them to the customer.

38. I reject these submissions. They are submissions that engage the fine detail of the weight given to the evidence by the Hearing Officer. In my view none her conclusions on these issues falls outside the range of decisions open to a

reasonable Hearing Officer, and therefore none of them amounts to an error of principle.

Sales Figures

39. I return finally to the question of sales figures. The Hearing Officer correctly identified that this was potentially the strongest evidence in favour of a finding of enhanced distinctiveness, but (as set out in the quote from paragraph 68 of the Decision set out above) declined to make such a finding as it was unclear in her view exactly what those sales figures related to.
40. Nothing stated explicitly by Mr Foster in his witness statement assists in resolving this issue. The Appellant therefore has to rely on an inference that it says is to be drawn from Mr. Foster's evidence. As I have rejected the criticisms of the Hearing Officer's decision where she deals with the material said to support that inference, it follows that I also reject the submission that she should have inferred substantial relevant sales.
41. I therefore dismiss Ground 1.

GROUND 2

42. Ground 2 addresses the Hearing Officer's assessment of the likelihood of direct confusion. As with Ground 1, the Appellant's submissions focussed solely on the Hearing Officer's decisions on the facts.
43. The relevant parts of the Hearing Officer's Decision are at paragraphs 77-79 which state as follows:
 77. The following factors must be considered to determine if a likelihood of confusion can be established:
 - I have found the marks to be visually and aurally similar to between a medium and high degree.
 - I have found the marks to be conceptually similar to a medium degree.
 - I have found the opponent's earlier mark to be inherently distinctive to between a low and medium degree.
 - I have identified the average consumer as the general public, and professionals such as beauticians or nail

technicians, who will select the services primarily by visual means, although I do not discount an aural component.

- I have concluded that a medium degree of attention will be paid during the purchasing process.
- I have found the parties' goods and services to be similar to a medium degree.

78. In considering the issue of confusion, I have given thought to the *Medion* principle and whether it can apply to the present case. On this point, I remind myself of the comments of Arnold J (as he then was) at paragraph 20 in the case of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch) wherein he set out that the *Medion* principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. Further, he set out that the principle does not apply where the composite mark is perceived as a unit. In the present case, I have found that the words "GLOSSY" and "BOX" in "GLOSSYBOX" and "GLOSSY BOYS" have unitary meanings. As such, the *Medion* principle cannot apply to these marks.

79. Taking all of the above into account, bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other. The case law has made it clear that the average consumer normally perceives a mark as a whole and does not dissect the mark. Therefore, the average consumer will not pull out the "GLOSSY" element and overlook the differences between the words "BOX" and "BOYS" in the parties' marks, which by themselves and in combination with the word "GLOSSY", gives the marks a clear and distinct conceptual hook to assist in differentiating between them. On this basis, I do not consider there to be a likelihood of direct confusion.

44. The Appellant criticized the Hearing Officer's finding at [79] on the basis that:

44.1. the Hearing Officer had already established that the marks were conceptually similar to a medium degree because the marks "share the concept conveyed by the word GLOSSY" (see Decision [62]). Therefore, her finding at [79] was inconsistent with that analysis.

44.2. the entire basis of the Hearing Officer's finding was because of said alleged conceptual differences. It is well established that one does not require a finding of conceptual similarity for there to be a likelihood of confusion (see *TVIS Limited v Howserv Services Limited & Ors* [2024] EWCA Civ 1103 at [40][[41]). The

simple fact that part of the marks was conceptually different is not enough to dispel any confusion that would arise from the other important similarities between the marks.

45. At paragraphs 40 and 41 of TVIS, Arnold LJ stated as follows:

The third problem is that the judge appears to have been led into error as to the relevance of conceptual (dis)similarity in cases where the sign and the trade mark are visually and aurally similar. Contrary to what the judge seems to have thought, it is not necessary for the sign and the trade mark to be conceptually similar in order for there to be a likelihood of confusion. For example, there can be a likelihood of confusion where the trade mark and the sign are visually and aurally similar and both are meaningless.

Although the judge does not in terms refer to it in his judgment, it can be seen from Howserv's closing submissions at trial that Howserv relied upon the principle of "conceptual counteraction" established in the jurisprudence of the CJEU. This principle is that a conceptual difference between a sign and a trade mark can counteract visual and aural similarities in the assessment of likelihood of confusion. Conceptual counteraction is "exceptional", however, and can only occur where "at least one of the signs at issue has, from the perspective of the relevant public, a clear and specific meaning which can be grasped immediately by that public": see Case C-328/18 P *European Union Intellectual Property Office v Equivalenza Manufactory SL* [EU:C:2020:156] at [74]-[75]. In this Court counsel for Howserv accepted that this requirement was not satisfied in the present case. It follows that there can be no question of conceptual counteraction.

46. I start by noting that in my view nothing in the Decision suggests that the Hearing Officer regarded conceptual similarity as a pre-requisite for a likelihood of confusion.
47. I do not accept the Appellant's submission that the Hearing Officer has made her decision based solely on conceptual counteraction. I do not read her analysis as saying but for the conceptual differences there would be a likelihood of confusion. On the contrary it seems clear that she has considered all the similarities and differences (i.e. visual, oral and conceptual) arising from the differing use of BOX and BOYS. That is made clear, amongst other things, by her use of the phrase "conceptual hook to assist", which I take to be a reference to the effect the

conceptual dissimilarity she refers has in conjunction with the aural and visual dis/similarities.

48. I also do not accept that the Hearing Officer's finding is inconsistent in the way suggested by the Appellant. The Appellant has considered both the overall conceptual similarity caused by the joint use of GLOSSY. That is one part of the conceptual picture. She has then considered the effect of the conceptual difference caused by the differing use of BOX and BOYS. That is another part of the conceptual picture. The relative importance of those similarities and differences are a matter of weight for the Hearing Officer. The fact that the overall picture is one of medium conceptual similarity does not mean, in my view, that the conceptual differences are of no significance at all.

Imperfect Recollection

49. Finally, the Appellant submitted that the Hearing Officer failed properly to take into account imperfect recollection and did not directly address the possibility that it would lead consumers to mistake GLOSSYBOYS for GLOSSYBOX.
50. I reject this submission. It is clear on the face of paragraph 79 the Decision that the Hearing Officer had the concept of imperfect recollection firmly in mind, the start of which paragraph states as follows:

Taking all of the above into account, bearing in mind the principle of imperfect recollection, I am satisfied that the marks are unlikely to be mistakenly recalled or misremembered as each other.....

51. In my view, there was no need, on the facts of this case, to say more than that.
52. For all these reasons I dismiss Ground 2.

GROUND 3

53. Ground 3 relates to indirect confusion. The primary argument under this ground related to enhanced distinctiveness, a matter which I have already addressed.

54. The remaining argument under this ground concerned paragraph 84 of the Decision. This stated as follows:

84. Lastly, category (c) cited above is where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension. In this case, both marks start with the word “GLOSSY”, which is either qualified by the word “BOX” at the end of the opponent’s mark or the word “BOYS” at the end of the holder’s IR. I do not consider that changing the word “BOX” to “BOYS”, or vice versa, is logical, nor consistent with a brand extension. The words “BOX” and “BOYS” evoke completely different conceptual meanings, and cannot be linked in any way. I also bear in mind that the opponent has not provided any submissions as to why the use of “GLOSSY BOYS” on cosmetic goods would be considered a logical brand extension of “GLOSSYBOX” which is used on retail services in relation to cosmetics, but they do state that “the fact the opponent has already expanded its use to “GLOSSY GIRLS” and “GLOSSY BOX MEN”, clearly shows the natural brand extension of the earlier marks”. However, firstly, none of the evidence provided by the opponent at exhibit MF7 shows use of the mark “GLOSSY GIRLS”. It always shows use of the “GLOSSYBOX” mark followed by the word “GIRLS”, either on the boxes themselves or used within the Instagram descriptions. Secondly, the exhibited examples of their current brand extensions being “GLOSSYBOX” to “GLOSSYBOX MEN” and “GLOSSYBOX WOMEN” all contains the word “GLOSSYBOX” within them. However, as noted above, in this case, the holder’s IR does not contain the word “GLOSSYBOX” as a whole, it only contains the “GLOSSY” element and thus I find that the opponent’s submissions have no weight or impact on my above findings.

55. The Appellant submitted that the reasoning in paragraph 84 was fundamentally flawed because, contrary to what the Hearing Officer said, exhibit MF7 showed:

- 55.1. use of the mark GLOSSY GIRLS, and
- 55.2. examples of their current brand extensions being which contained the word GLOSSYBOX, namely: (a) “GLOSSYBOX MEN”, and (b) “GLOSSYBOX WOMEN”.

56. Mr Head who appeared for the Respondent, submitted that:

- 56.1. GLOSSY GIRLS was not used on a cosmetic box per se (albeit it does appear in what Mr Head describes as a decorative banner). On the contrary all the cosmetic boxes marked GLOSSYBOX MEN or GLOSSYBOX WOMEN and she was entitled to find that this was the brand extension

used by the Appellant. There was therefore no factual error on the Hearing Officer's part.

56.2. the Hearing Officer was entitled to find that the use of GLOSSYBOX MEN/GLOSSYBOX women did not demonstrate a use of the GLOSSYBOYS brand.

57. I accept those submissions. For these reasons I see no error of principle in the Hearing officer's conclusion at paragraph 84.

58. I therefore dismiss Ground 3.

CONCLUSION

59. For the reasons set out above, the appeal is dismissed.

60. The Appellant shall pay the Respondent the following within 21 days of the date of this Decision:

- a. the sum of £750 ordered by the Hearing Officer but stayed pending this appeal;
- b. £1500 as a contribution to the Respondent's costs of this appeal.

GEOFFREY PRITCHARD KC

27/7/26