

O/0740/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4116038

IN THE NAME OF

NEXT VOGUE LLC

TO REGISTER THE TRADE MARK:

NEXT VOGUE

IN CLASS 28

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 452431

BY ADVANCE MAGAZINE PUBLISHERS INC

Background and pleadings

1. On 24 October 2024, NEXT VOGUE LLC (“the Applicant”) applied to register the trademark shown on the front page of this decision in the UK under application number 4116038. The application was published for opposition purposes on 08 November 2024 and registration is sought for the following goods:

Class 28- Chewing toys for parrots; Toys for birds; Pet toys; Toys; Toys and playthings for pet animals; Toy birds; Dog toys; Toys, games and playthings for pet animals; Toys for cats; Cuddly toys; Toys and playthings for pets; Toys for pet animals; Toys for animals; Toys for pets; Toy animals; Toys for dogs; Wind-up toys; Stuffed toys; Stuffed animals [toys]; Toys for babies; Rattles [toys]; Whistling toys; Toy dolls; Pet toys containing catnip; Toy dogs; Toy figurines; Plastic toys; Toys, games, and playthings; Plush toys; Stuffed toy animals; Toy fish; Infant toys; Ride-on toys; Crib toys; Whistles [toys]; Whack-a-mole toys for pets; Imitation bones being toys for dogs; Balancing bird toys; Radio-controlled toys; Fidget toys; Noisemakers [toys]; Puzzles [toys]; Inflatable toys; Windup toys; Pet toys made of rope; Talking toys; Drones [toys]; Wooden toys; Mobiles [toys]; Miniature car models [toys or playthings]; Bathtub toys; Toy hats; Fluffy toys; Stuffed bean-filled toys; Toys for use in perambulators; Plastic toys for use in the bath; Toy balloons; Toys for infants; Cloth toys; Toy plants; Stuffed and plush toys; Stuffed plush toys; Plush stuffed toys; Toy flowers; Clockwork toys; Toy playsets; Toy mobiles; Plastic character toys; Bath toys; Sand toys; Toy whistles; Model cars [toys or playthings]; Toy furniture; Intelligent toys; Crib mobiles [toys]; Toy insect cages; Educational toys; Toys for sandpits; Toy xylophones; Toy watches; Toy robots; Toy gliders; Inflatable ride-on toys; Snuffle mats being dog toys; Action figures [toys or playthings]; Toy brooches; Toy prams; Inflatable bath toys; Toys for domestic pets; Toy harmonicas; Wind-up walking toys; Soft toys; Toy binoculars; Toy tableware; Plastic models being toys; Smart plush toys; Water toys; Smart robot toys; Toy aeroplanes; Tricycles for infants [toys]; Model toys; Controllers for toys; Toy jewellery; Musical toys; Smart toys; Scooters [toys]; Bouncing toys; Toy airplanes; Toy balls; Battery-operated action toys; Models being toys; Play mats for use with toy vehicles

[playthings]; Bendable toys; Outdoor toys; Play mats incorporating infant toys [playthings]; Toy food; Toy wheelbarrows; Baby playthings; Toy bicycles; Rubber character toys; Toy guns; Flying discs [toys]; Sketching toys; Toy tools; Squeezable squeaking toys; Toy pianos; Toy putty; Rocking toys; Toy telephones; Clockwork toys [of plastics]; Wheeled toys; Mechanical toys; Toy glockenspiels; Fabric toys; Imitation toilet articles being toys; Clothing for toy figures; Rattles [playthings]; Punching toys; Toy action figurines; Toy boats; Toy figures.

2. On 10 February 2025, Advance Magazine Publishers Inc (“the Opponent”) filed a notice of opposition against the application. The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against all the goods in class 28. The Opponent relies upon the following trade mark:

VOGUE

UK trade mark no. 3628559

Filing date 19 April 2021; registration date 05 November 2021.

Relying on the goods in class 28 of the registration, namely:

Class 28- Games, toys and playthings; board games; card games; puzzles; jigsaw puzzles; gymnastic and sporting articles; decorations for Christmas trees; toy figurines; dolls; playing cards; trading cards; handheld computer games; fitness articles and equipment; Christmas decorations; toy mobiles; stuffed toys; toys for pets; arcade games; computer game apparatus; video game apparatus; computer games hardware; computer games equipment; tv game apparatus; coin feed amusement apparatus; bags, cases and carriers for games, toys, playthings, puzzles, jigsaw puzzles, sporting, fitness and gymnastic equipment, adapted/shaped to carry such equipment; parts, fittings and accessories for all the aforesaid goods.

3. By virtue of its earlier filing date, the Opponent’s mark constitutes an earlier mark within the meaning of section 6 of the Act. As the mark had not completed the

registration process more than five years before the relevant date (the filing date of the mark in issue), it is not subject to proof of use pursuant to section 6A of the Act. The Opponent can, therefore, rely upon all of the goods it has identified without having to demonstrate use.

4. The Opponent submits that the Applicant's mark is highly similar to the Opponent's and the respective goods are identical or similar, giving rise to a likelihood of confusion.

5. The Applicant filed a counterstatement denying the claims made.

6. In these proceedings, the Opponent is represented by Stobbs. The Applicant is a litigant in person acting without legal representation. The Applicant filed evidence. Neither party requested a hearing, though I note that the Opponent filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Evidence

7. The Applicant's evidence consists of the Witness Statement of Aquib Zaman, dated 19 August 2025. Mr Zaman is a director of NEXT VOGUE LLC and his statement is accompanied by 3 exhibits, being exhibits AZ1-AZ3.

8. The Applicant's exhibits AZ1 and AZ3 go mainly to show the Applicant's purported use of the "Next Vogue" Mark in the United Arab Emirates and the United States. Exhibit AZ2 consists of screen shots of the trade marks register showing four registered trade marks containing the word "Vogue".

9. I do not intend to summarise the evidence in full here, however, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Preliminary issues

10. Within their evidence the Applicant has raised points that I intend to address as preliminary issues. Before going further into the substantive merits of these proceedings, it is necessary to explain why, as a matter of law, these points will have no bearing on the outcome of this opposition.

Goods comparison

11. At paragraph 18 of the Witness Statement of Aquib Zaman the Applicant states that “The Applicant sells through pet-focused online channels and specialist marketplaces, while the Opponent’s presence is in magazine publishing, fashion events, lifestyle collaborations, and brand licensing. Any overlap in goods/services at the level of “pet toys” is, at most, hypothetical and commercially insignificant.” However, I bear in mind that how the parties’ goods are used and sold in practice are not relevant to my assessment. It is settled case law that I must carry out a notional assessment based upon the specifications before me (how the goods within the parties’ specifications could be used and sold), and all the circumstances in which the mark applied for might be used if it were registered.¹ Therefore, this submission does not assist the Applicant.

State of the register

12. Exhibit AZ2 to the Witness Statement of Aquib Zaman consists of screen shots of the UK trade marks register showing four registered trade marks containing the word “Vogue”. Within the witness statement Mr Zaman states that “This real-world coexistence demonstrates that the word “VOGUE”, while distinctive in its own sectors, does not enjoy an absolute monopoly across all classes or composites. On the same footing, NEXT VOGUE can peacefully coexist with VOGUE, without any likelihood of consumer confusion.”

¹ O2 Holdings Limited & Anor v Hutchison 3G UK Limited, Case C-533/06, paragraph 66.

13. 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).”

14. 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. As such, I will continue to make my decision based on a fair and notional assessment of the similarity of the marks before me in these proceedings and the respective goods at issue.

Prior use of the mark

15. Exhibit AZ1 and AZ3 go mainly to show the Applicant’s alleged use of the “Next Vogue” Mark in the United Arab Emirates and the United States. Within the witness statement Mr Zaman states that “The trade mark NEXT VOGUE was conceived and adopted by me independently and in good faith” and that “Our planned UK entry is a natural extension of that activity, focused on Class 28 pet toys and playthings. The UK application was filed to ring-fence that intended use”. Again, this evidence is not relevant to the notional assessment I must make under sections 5(2)(b). The evidence

provided by the Applicant shows use outside of the UK and the questions of how the applied for mark was conceived of or if the application was filed in good faith are not at issue. Accordingly, for the avoidance of doubt, I will say no more about this issue.

DECISION

16. 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.

Section 5(2)(b)

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

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

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

18. Section 5A of the Act is as follows:

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.”

19. 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 Paris Europe Inc & Anor*, [2025] UKSC 25:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

20. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

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

21. Guidance on this issue has also 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 users of the respective goods or services;

b) The physical nature of the goods or acts of services;

c) The respective trade channels through which the goods or services reach the market;

d) 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;

e) 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.

22. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

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

23. For the purposes of considering the issue of similarity of goods or services, 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 (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

24. The competing goods are as follows:

Opponent's goods	Applicant's goods
Class 28- Games, toys and playthings; board games; card games; puzzles; jigsaw puzzles; gymnastic and sporting articles; decorations for Christmas trees; toy figurines; dolls; playing cards; trading cards; handheld computer games; fitness articles and equipment; Christmas decorations; toy mobiles; stuffed toys; toys for pets; arcade games; computer game apparatus; video game apparatus; computer games hardware; computer games equipment; tv game apparatus; coin feed amusement apparatus; bags, cases and carriers for games, toys, playthings, puzzles, jigsaw puzzles, sporting, fitness and gymnastic equipment, adapted/shaped to carry such equipment; parts, fittings and accessories for all the aforesaid goods.	Class 28 - Chewing toys for parrots; Toys for birds; Pet toys; Toys; Toys and playthings for pet animals; Toy birds; Dog toys; Toys, games and playthings for pet animals; Toys for cats; Cuddly toys; Toys and playthings for pets; Toys for pet animals; Toys for animals; Toys for pets; Toy animals; Toys for dogs; Wind-up toys; Stuffed toys; Stuffed animals [toys]; Toys for babies; Rattles [toys]; Whistling toys; Toy dolls; Pet toys containing catnip; Toy dogs; Toy figurines; Plastic toys; Toys, games, and playthings; Plush toys; Stuffed toy animals; Toy fish; Infant toys; Ride-on toys; Crib toys; Whistles [toys]; Whack-a-mole toys for pets; Imitation bones being toys for dogs; Balancing bird toys; Radio-controlled toys; Fidget toys; Noisemakers [toys]; Puzzles [toys]; Inflatable toys; Windup toys; Pet toys made of rope; Talking toys; Drones [toys]; Wooden toys; Mobiles [toys]; Miniature car models [toys or playthings]; Bathtub toys; Toy hats; Fluffy toys; Stuffed bean-filled toys; Toys for use in perambulators; Plastic toys for use in the bath; Toy balloons; Toys for infants; Cloth toys; Toy plants; Stuffed and plush toys; Stuffed plush toys; Plush stuffed toys; Toy flowers; Clockwork toys; Toy

	playsets; Toy mobiles; Plastic character toys; Bath toys; Sand toys; Toy whistles; Model cars [toys or playthings]; Toy furniture; Intelligent toys; Crib mobiles [toys]; Toy insect cages; Educational toys; Toys for sandpits; Toy xylophones; Toy watches; Toy robots; Toy gliders; Inflatable ride-on toys; Snuffle mats being dog toys; Action figures [toys or playthings]; Toy brooches; Toy prams; Inflatable bath toys; Toys for domestic pets; Toy harmonicas; Wind-up walking toys; Soft toys; Toy binoculars; Toy tableware; Plastic models being toys; Smart plush toys; Water toys; Smart robot toys; Toy aeroplanes; Tricycles for infants [toys]; Model toys; Controllers for toys; Toy jewellery; Musical toys; Smart toys; Scooters [toys]; Bouncing toys; Toy airplanes; Toy balls; Battery-operated action toys; Models being toys; Play mats for use with toy vehicles [playthings]; Bendable toys; Outdoor toys; Play mats incorporating infant toys [playthings]; Toy food; Toy wheelbarrows; Baby playthings; Toy bicycles; Rubber character toys; Toy guns; Flying discs [toys]; Sketching toys; Toy tools; Squeezable squeaking toys; Toy pianos; Toy putty; Rocking toys; Toy telephones; Clockwork toys [of plastics]; Wheeled toys; Mechanical toys; Toy glockenspiels; Fabric toys; Imitation
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	toilet articles being toys; Clothing for toy figures; Rattles [playthings]; Punching toys; Toy action figurines; Toy boats; Toy figures.
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25. Both parties have provided me with submissions regarding the comparison of the goods which I have considered and will refer to as necessary.

Toys; Toys [...] for pets; Stuffed toys; Toy figurines; Toys, games, and playthings; Puzzles [toys]; Toy mobiles.

26. The above goods appear in the specifications of both the Applicant and the Opponent and as such are identical.

Chewing toys for parrots; Toys for birds; Pet toys; Toys [...] for pet animals; Dog toys; Toys, games and playthings for pet animals; Toys for cats; Toys for pet animals; Toys for animals; Toys for pets; Toys for dogs; Pet toys containing catnip; Whack-a-mole toys for pets; Imitation bones being toys for dogs; Pet toys made of rope; Snuffle mats being dog toys; Toys for domestic pets; Squeezable squeaking toys.

27. The above goods are all forms of toys for pets and animals. It is my view that these goods would be encompassed by the Opponent's broader term *toys for pets*. I therefore find the goods to be identical in line with the principle set out in *Meric*.

Toy birds; Cuddly toys; Toy animals; Wind-up toys; Stuffed animals [toys]; Toys for babies; Rattles [toys]; Whistling toys; Toy dolls; Toy dogs; Plastic toys; Plush toys; Stuffed toy animals; Toy fish; Infant toys; Ride-on toys; Crib toys; Whistles [toys]; Balancing bird toys; Radio-controlled toys; Fidget toys; Noisemakers [toys]; Inflatable toys; Windup toys; Talking toys; Drones [toys]; Wooden toys; Mobiles [toys]; Miniature car models [toys or playthings]; Bathtub toys; Toy hats; Fluffy toys; Stuffed bean-filled toys; Toys for use in perambulators; Plastic toys for use in the bath; Toy balloons;

Toys for infants; Cloth toys; Toy plants; Stuffed and plush toys; Stuffed plush toys; Plush stuffed toys; Toy flowers; Clockwork toys; Toy playsets; Plastic character toys; Bath toys; Sand toys; Toy whistles; Model cars [toys or playthings]; Toy furniture; Intelligent toys; Crib mobiles [toys]; Toy insect cages; Educational toys; Toys for sandpits; Toy xylophones; Toy watches; Toy robots; Toy gliders; Inflatable ride-on toys; Action figures [toys or playthings]; Toy brooches; Toy prams; Inflatable bath toys; Toy harmonicas; Wind-up walking toys; Soft toys; Toy binoculars; Toy tableware; Plastic models being toys; Smart plush toys; Water toys; Smart robot toys; Toy aeroplanes; Tricycles for infants [toys]; Model toys; Controllers for toys; Toy jewellery; Musical toys; Smart toys; Scooters [toys]; Bouncing toys; Toy airplanes; Toy balls; Battery-operated action toys; Models being toys; Bendable toys; Outdoor toys; Toy food; Toy wheelbarrows; Toy bicycles; Rubber character toys; Toy guns; Flying discs [toys]; Sketching toys; Toy tools; Toy pianos; Toy putty; Rocking toys; Toy telephones; Clockwork toys [of plastics]; Wheeled toys; Mechanical toys; Toy glockenspiels; Fabric toys; Imitation toilet articles being toys; Clothing for toy figures; Punching toys; Toy action figurines; Toy boats; Toy figures.

28. The above goods are all toys and would be encompassed by the Opponent's broader term *toys*. The goods are therefore identical in line with the principle set out in *Meric*.

Playthings for pet animals; playthings for pets.

29. The above goods are playthings and would be encompassed by the Opponent's broader term *playthings*. As such, the goods are identical in line with the principle set out in *Meric*.

Play mats for use with toy vehicles [playthings]; Play mats incorporating infant toys [playthings]; Baby playthings; Rattles [playthings].

30. The above goods are various forms of playthings and would be encompassed by the Opponent's broader term *playthings*. Consequently, the goods are identical in line with the principle set out in *Meric*.

The average consumer and the nature of the purchasing act

31. As the case law above indicates, it is necessary to determine who the average consumer is for the goods and services at issue. I must then determine the manner in which the goods and services are likely to be selected by the average consumer.

32. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

33. 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, 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.

34. The goods in question are all toys or playthings, some of which are for animals. I consider that the average consumer of the goods at issue will likely be a member of the general public with children or who owns pets or animals. Whilst the goods are not everyday purchases, they are likely to be purchased semi regularly and the cost of purchase will likely vary, although, overall they are relatively inexpensive. Consumers are likely to be alive to considerations such as design of the goods, their quality and the suitability for their child or pet. Overall, I consider that the average consumer will demonstrate a medium level of attention during the purchasing process.

35. The goods will be available at both general and specialist retailers, such as pet or toy shops and their online or catalogue equivalents. At the retailers' physical premises, the goods will be displayed on shelves, where they will be self-selected by consumers. A similar process will apply where the goods are selected online or via catalogues. As such, the purchasing act will be predominantly visual in nature, however, I recognize that there may also be an aural aspect to the purchasing process where advice is sought from a retail assistant or word of mouth recommendations play a role.

Comparison of marks

36. 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 CJEU 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 relevant 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.”

37. 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 trade 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.

38. The marks to be compared are as follows:

Opponent's Mark	Applicant's Mark
VOGUE	NEXT VOGUE

39. The Opponent's mark consists of the ordinary dictionary word “VOGUE”. As there are no other additional elements, the overall impression of the mark resides in the word itself.

40. The Applicant's mark is a word only mark consisting of the two words "NEXT VOGUE". The Opponent submits that the word "vogue" is the dominant element of the Application as "NEXT is a common, everyday word that lack inherent ability to distinguish goods and services from one undertaking to another".² As I will come to discuss in the conceptual comparison, I consider the word "NEXT" serves to qualify the word "VOGUE" and as such I am of the view that the overall impression of the mark resides in the combination of these words.

Visual comparison

41. Visually, the marks coincide in the word "VOGUE". This is the entirety of the Opponent's mark and the second word in the Applicant's mark. This creates a point of visual similarity; however, the marks differ through the addition of the word "Next" at the beginning of the Applicant's mark which has no counterpart in the Opponent's mark. In view of this, I consider the marks to be visually similar to at most a medium degree.

Aural comparison

42. Aurally, the word "Vogue" in the Opponent's mark will be given its ordinary dictionary pronunciation, as will the words "Next" and "Vogue" in the Applicant's mark. While the marks both share the pronunciation of the word "Vogue", they differ in the pronunciation of the additional word "Next" at the beginning of the Applicant's mark. Overall, I find the marks to be aurally similar to at most a medium degree.

Conceptual comparison

43. 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* [2006] ECR I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

² Opponent's written submissions in lieu, Paragraph 14.

44. The Opponent's mark is comprised solely of the ordinary dictionary word "Vogue". Within their written submissions the Opponent states that the word " 'Vogue' is known to consumers to mean a trend, usually in terms of fashion and one that is likely temporary",³ while the Applicant submits that "the word vogue is a commonly used word in the English language meaning "fashion" or "trend".⁴ Whilst I note that the word "Vogue" has the dictionary definition of "a fashion or general liking, especially one that is temporary",⁵ I am not convinced that the average consumer would be aware of its exact meaning. I instead consider that a significant proportion of consumers would recognise the term and understand that it has some meaning associated with fashions or trends.

45. The Applicant's mark is comprised of two words, both of which have dictionary definitions. The word "Vogue" will be understood by consumers in the same terms as in the Opponent's mark. The word "next" is defined as "being the first one after the present one or after the one just mentioned" ⁶ and I am of the view that the consumers will be aware of its meaning. Within the Applicant's mark, the word "next" serves to qualify the concept conveyed by the word 'vogue', with the mark as a whole conveying the conceptual message of a fashion or trend that will follow the current one. In view of this, and given that the marks both carry the same association with fashions or trends, I find the marks to be conceptually similar to a medium degree.

Distinctive character of the earlier mark

In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular

³ Opponent's written submissions in lieu, Paragraph 17.

⁴ Applicant's TM8 and counterstatement, Paragraph 4.

⁵ <https://dictionary.cambridge.org/dictionary/english/vogue> - Accessed 11 August 2026

⁶ <https://dictionary.cambridge.org/dictionary/english/next> - Accessed 11 August 2026

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).

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)."

46. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The Opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness through the use made of it, nor has it filed any evidence to that effect. Therefore, I have only the inherent distinctiveness of the mark to consider.

47. As previously discussed in my conceptual comparison at paragraph 44, the Opponent's mark is comprised solely of the ordinary dictionary word "Vogue". The word "Vogue" is not descriptive, nor is it allusive to, the goods relied upon by the Opponent in class 28. Consequently, I consider the mark to be inherently distinctive to a medium degree.

Likelihood of confusion

48. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear in mind 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 he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

49. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and the goods down to the responsible undertakings being the same or related.

50. Earlier in this decision I concluded that:

- The competing goods are identical;
- The average consumer will primarily comprise members of the general public who own pets or have children. All consumers will demonstrate a medium level of attention during the selection process;
- The purchasing process will be predominantly visual in nature, though aural considerations will not be discounted;
- The Opponent's earlier mark holds a medium degree of inherent distinctiveness;
- The Opponent's mark is visually similar to the Applicant's mark to at most a medium degree;
- The Opponent's mark is aurally similar to the Applicant's mark to at most a medium degree;

- The Opponent's mark is conceptually similar to the Applicant's mark to a medium degree.

51. Weighing the above factors and bearing in mind the principle of imperfect recollection, I am satisfied that the parties' marks are unlikely to be mistakenly or misremembered as each other by the average consumer. Although the marks overlap in the shared word "Vogue", I do not consider that a consumer paying a medium degree of attention during the purchasing process will overlook the word "Next" at the beginning of the Applicant's mark, which makes a visual, aural and conceptual impact. As such, I do not consider there to be a likelihood of direct confusion.

52. I will now go on to consider whether there is a likelihood of indirect confusion.

53. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C. (as he then was), as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. 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)."

54. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 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.

55. Turning to indirect confusion, I note the examples set out by Mr Purvis are not exhaustive. Within their submissions the Opponent argues that the "Application has simply added a non-distinctive element (NEXT) to the earlier right, which consumers may believe to be a sub brand of the Opponent".⁷ In the present case, for the reasons I have discussed above, I do not consider the "Next" element of the Applicant's mark to be non-distinctive. However, I still consider it likely that when confronted with the parties' marks, consumers will recognise the shared "Vogue" element and would make a connection between the marks. Keeping in mind that I have found the word "Next" to qualify the word "Vogue", I am of the view that the average consumer will see the additional "Next" element in the Applicant's mark and perceive it to be a brand extension or sub brand of the Opponent's mark; with "Vogue" being the house brand

⁷ Opponent's written submissions in lieu, Paragraph 24.

and “Next Vogue” being the sub-brand or brand extension denoting, for example, its new range or next generation of products. As such, the average consumer will not attribute the difference between the marks to coincidence but will assume that the marks at issue originated from the same or an economically linked undertaking. Consequently, I consider there to be a likelihood of indirect confusion between the marks in respect of all of the contested goods.

Conclusion

56. The opposition under section 5(2)(b) of the Act has succeeded in full. Subject to any successful appeal against my decision, the application is refused in its entirety.

COSTS

57. As the Opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice (‘TPN’) 1 of 2023. Taking account of that scale, I award the Opponent the sum of £700, calculated as follows:

Preparing a Notice of Opposition and considering the other side’s counterstatement:	£250
Filing submissions:	£350
Official fee:	£100
Total:	£700

58. I therefore order NEXT VOGUE LLC to pay the sum of £700 to Advance Magazine Publishers Inc. The above 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 14th day of August 2026

Jacob Robinson
For the Registrar