

O/0768/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004192728

BY CLARE PARK

TO REGISTER THE TRADE MARK:

Lyra Nox

IN CLASSES 9, 25 AND 41

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600003764

BY RZS HOUSE LTD

Background and pleadings

1. On 22 April 2025, **Clare Park** (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on the 23 May 2025.

2. Since these proceedings commenced, a number of classification issues have been identified. Following lengthy correspondence between the Applicant and the Tribunal, all the relevant amendments have now been made and the Applicant’s specifications current stand as listed in the goods and services table in below. My decision is based on these specifications.

3. The application was opposed in its totality by **RZS HOUSE LTD** (“the Opponent”) on 18 August 2025 under the fast-track procedure¹. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against all of the goods and services. Registration is sought for the following goods and services as listed in the Goods and Services comparison table below².

4. Under section 5(2)(b), the Opponent relies upon the following trade mark:

LYRA MODEST

UK registration no. UK00003970147

Filing date 20 October 2023.

Registration date 12 January 2024.

5. The Opponent relies upon all of the goods for which its earlier mark is registered, namely:

Class 25 Clothing; Headgear; Sportswear; Swimwear; Underwear.

¹ Pursuant to The Trade Marks (Fast Track Opposition) (Amendment) Rules 2013.

² Paragraph 13

6. The Opponent claims that “the marks are visually and aurally highly similar and conceptually identical and cover practically identical goods in Class 25 and highly similar goods and services in Classes 9 and 41” and that “there is a likelihood of confusion on the public's part with the Earlier Trade Mark”.³

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

8. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20 (4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”⁴

9. The Opponent is represented by **Trama Legal s.r.o.**, and the Applicant represents themselves. Neither party requested leave to file evidence or for an oral hearing in this fast-track opposition; neither party filed submissions in lieu of a hearing. This decision is taken following a careful consideration of the papers.

10. 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.

Decision

Section 5(2)(b)

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

³ Opponent's Statement of Grounds, paras 27-28.

⁴ The effect of the above is to require parties to seek leave in order to file evidence in fast track oppositions. Further, Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it, or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.

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

(a) ...

(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”.

11. The Opponent’s mark qualifies as an earlier mark, in accordance with section 6 of the Act. As the earlier mark had not been registered for five years or more before the application date of the contested mark, it is not subject to proof of use requirements. Therefore, the Opponent can rely upon all of the goods identified in its Form TM7F.

12. Section 5A of the Act states as follows:

“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.”

13. 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 and services

14. The goods and services to be compared are:

Opponent's goods	Applicant's goods and services
<u>Class 25</u> <i>Clothing; Headgear; Sportswear; Swimwear; Underwear.</i>	<u>Class 9</u> <i>Sound recordings; downloadable music files; downloadable audio recordings; digital music downloadable from the internet; pre-recorded CDs; vinyl records; USB drives featuring audio recordings; digital audio files featuring music; multimedia recordings containing music; video text and images; AI generated audio and music recordings; downloadable AI generated music and soundscapes; downloadable AI generated video and multimedia files; recorded media featuring performances generated or enhanced by AI; digital artwork and visual content generated by AI; digital content combining music or spoken word poetry or sound design created by AI; downloadable and streamed audio visual media and interactive content in digital formats; recorded performances including vocals instrumentals; ambient works and narrative compositions human or AI generated; downloadable virtual goods, namely digital music files, downloadable audio and video recordings, downloadable digital artwork,</i>

	downloadable fashion images for use in virtual environments, downloadable virtual clothing and accessories for avatars, downloadable multimedia files authenticated by NFTs; digital-physical hybrid wearables;.
	<u>Class 25</u> <i>Clothing; footwear; headgear; t-shirts; sweatshirts; hoodies; long-sleeve tops; crop tops; vests; singlets; tank tops; bodysuits; blouses; shirts; polos; knitwear; jumpers; cardigans; jackets; bomber jackets; varsity jackets; denim jackets; trench coats; overcoats; parkas; gilets; puffer jackets; raincoats; windbreakers; anoraks; coats; tracksuits; loungewear; activewear; gym wear; base layers; thermal clothing; leggings; cycling shorts; joggers; cargo trousers; tailored trousers; jeans; shorts; skirts; skorts; dresses; tunics; playsuits; jumpsuits; underwear; bras; bralettes; knickers; boxers; briefs; shapewear; thermal underwear; sleepwear; pyjamas; nightgowns; robes; dressing gowns; swimwear; bikinis; swimsuits; one-piece swimsuits; rash vests; beachwear; sarongs; cover-ups; kaftans; socks; stockings; tights; leg warmers; gloves; scarves; snoods; shawls; wraps; hats; caps; beanies; bucket hats; berets; headbands;</i>

	bandanas; earmuffs; balaclavas; footwear including boots; ankle boots; Chelsea boots; thigh-high boots; heeled shoes; loafers; brogues; Oxfords; trainers; sneakers; running shoes; sandals; sliders; flip-flops; slippers; stagewear; performance costumes; ritual garments; cloaks; ceremonial robes; fashion accessories being parts of clothing, footwear or headgear; branded merchandise clothing; artist-branded garments; clothing and accessories featuring names, logos, symbols, graphics, or sigils associated with the Lyra Nox persona; garments incorporating AI-generated artwork and digital designs; Clothing; footwear; headgear; jackets; dresses; T-shirts; trousers; hoodies; scarves; hats; performance wear; art-inspired garments; limited edition fashion garments; limited edition fashion lines; streetwear; high fashion apparel; bespoke clothing; unisex clothing; gender-neutral clothing; sustainable and eco-conscious fashion.
	<u>Class 41</u> Entertainment services; music entertainment services; live music performances; live vocal performances; DJ performances; songwriting; music composition; music production; sound

	<i>engineering; provision of live and recorded musical entertainment; performance of music and singing; provision of online music, not downloadable; streaming of audio and video content for entertainment purposes; presentation of musical performances via global communication networks; entertainment in the nature of live audio performances, visual performances and musical shows; organising and conducting concerts, gigs, festivals and tours; music recording services; audio and video recording services; multimedia production services; post-production editing services for music, video and film; creation and editing of audio-visual content; production and presentation of podcasts; provision of downloadable and non-downloadable media content; production of music videos, visual art films and experimental content; direction and production of digital performances, installations and immersive experiences; entertainment services featuring AI-generated media and visuals; presentation of performances using virtual reality, augmented reality and mixed-reality environments; creation of virtual concerts and metaverse-based entertainment; digital curation of</i>
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	<i>exhibitions, art shows and audio-visual events; publication of texts, books, poetry, lyrics, journals and zines; electronic publishing services; publishing of artistic and musical works; creation and distribution of branded artist content and merchandise tie-in media; entertainment services incorporating symbolic, mythic or ritual themes; instruction and training in artistic performance, music, voice, and stagecraft; hosting of workshops, retreats, masterclasses, and community creativity events; providing online non-downloadable videos, audio, and digital publications; organising cultural events; providing entertainment via social media platforms; fan engagement and community-building experiences through digital entertainment; consultancy and creative direction in the fields of music, performance, and visual art ; Provision of audio, music, video and multimedia entertainment content via streaming; Provision of interactive music experiences and virtual concerts.</i>
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15. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per Canon, where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgement:

“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.”

16. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

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

17. In *Gérard Meric v Office for Harmonisation in the Internal Market (OHIM)*, Case T-133/05, the General Court (“GC”) stated that:

“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.”

18. Further, in *Kurt Hesse v OHIM*⁵, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the GC stated that “complementary” means:

“[...] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

19. For the purposes of considering the issue of similarity of goods and 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.⁶

20. I note that in its statement of grounds, the Opponent has put forward specific combinations of certain terms for comparison. For other terms the Opponent has compared the Applicant’s class more generally, on the basis that they fall in broader aspects of the Opponent’s specification, rather than explicitly going through the *Canon* and *Treat* factors and without referring to any specific terms. I remind myself of paragraph 28 of the appeal to the Appointed Person in *SMARTX BL O/0911/24* which states that:

“... it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identity). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. The approach for which Mr Wood contends would place an intolerable burden on Hearing Officers in cases of this nature in which there will be

⁵ Case C-50/15 P

⁶ (see *Separate Trade Mark (BL O/399/10) and BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent."

21. I bear in mind that the Applicant's specification is lengthy. I will therefore proceed on the basis that I will only consider similarities which have been highlighted by the Opponent, or where the similarity is obvious to me, otherwise, without evidence to the contrary, the goods and services will be found to be dissimilar.

22. In relation to its goods and services the Opponent states:

The Class 41 services similarly include live musical and visual performances, virtual concerts, and immersive experiences, which are often accompanied by or directly promote branded fashion merchandise. Entertainment companies routinely license their marks for clothing lines, and it is common in this sector for Class 25 goods to be marketed as licensed merchandise arising from entertainment activities in Class 41. The Office has recognised in past cases that goods in Class 25 can be considered similar to entertainment services where there is a commercial practice of cross-promotion. Given this strong overlap in commercial origin, purpose, and consumer expectation, the Applicant's goods and services in Classes 9 and 41 form part of a single marketing ecosystem.⁷

23. The Applicant claims that the services '*are distinct from apparel retail or fashion*'⁸.

24. I bear in mind that I must compare the goods and services as described within the parties' specifications before me and all the circumstances in which the UK mark applied for might be used if it were registered⁹, not how the goods or services are currently marketed by the parties under their respective marks. Furthermore,

⁷ Opponent TM7F Statement of Grounds para 24

⁸ Applicant TM8 .3

⁹ *O2 Holdings Limited & Anor v Hutchison 3G UK Limited*, Case C-533/06, paragraph 66.

marketing strategies including the targeting of specific consumers, are temporary and may change over time. As such, it is not appropriate to take that factor into account in my assessment, nor am I bound by previous findings of the Tribunal. I shall draw my own conclusions on the similarity of the goods and services before me, as rationalised in the following paragraphs. I will make an assessment, later in this decision as to who the average consumer could be for the goods at issue.

Class 9

25. The Opponent states that the Applicant's goods in Class 9 are '*closely aligned with, and therefore confusingly similar to, the Opponent's goods as they are likely to be encountered by the same consumers in the same commercial context*'.¹⁰

Sound recordings; downloadable music files; downloadable audio recordings; digital music downloadable from the internet; digital audio files featuring music; multimedia recordings containing music; AI generated audio and music recordings; downloadable AI generated music and soundscapes; downloadable AI generated video and multimedia files; recorded media featuring performances generated or enhanced by AI; digital artwork and visual content generated by AI; digital content combining music or spoken word poetry or sound design created by AI; recorded performances including vocals instrumentals; ambient works and narrative compositions human or AI generated;

26. The Opponent's relied upon goods are physical articles of clothing items serving to cover, protect and adorn the body, and therefore differ in nature, purpose and use from the Applicant's class 9 digital and recorded goods. They are neither competitive nor complementary in accordance with the case law quoted above.

27. Whilst, as the Opponent suggests it may be the case that it's '*standard practice*' for entertainment and fashion industries to '*to monetise their identity across a unified range of outputs*' across '*digital music, video content, live shows, and fashion lines*',¹¹ the Opponent has not provided any supporting exhibited evidence to show that class 25 clothing and class 9 recordings, artwork or streamed or digital content are indeed produced and sold by the same undertakings. Nevertheless, I appreciate that there

¹⁰ Opponent TM7F Statement of Grounds – para 22

¹¹ Opponent TM7F statement of grounds para 23

may be a very general overlap in user (i.e. the general public will wear clothing items and might also access some digital, streamed or multimedia content); however, this on its own is not enough for a finding of similarity. I therefore consider these goods to be **dissimilar** to the Opponent's goods.

pre-recorded CDs; vinyl records; USB drives featuring audio recordings;

28. The Applicant's above goods are clearly different in physical nature, purpose and method of use to the Opponent's 'clothing'. The goods are not in competition, nor are they complementary. As outlined in *Boston Scientific*, the goods at issue are not indispensable or important for the use of the other, and the average consumer of the Applicant's goods would not normally expect it to be provided by the same undertaking as for any of the Opponent's clothing goods.

29. I remind myself that I must confine the terms used to the substance or core of their possible meanings.¹² Without any evidence before me, I consider that the goods do not overlap in trade channels. If all of the goods are sold within general stores, they will not be positioned in close proximity. Therefore, any overlap in relation to specific merchandise and channels of trade is considered tenuous in this instance and insufficient for a finding of similarity between the goods at hand. Whilst artists who produce CD's, vinyl records and audio recordings may have their own merchandise (produced by record labels, music publishers and artists), the goods are not produced by the same undertaking as the Opponent's clothing goods. Nor so I have evidence before me to the contrary. I therefore find the opposing goods to be **dissimilar**.

video text and images; downloadable and streamed audio visual media and interactive content in digital formats; downloadable fashion images for use in virtual environments, downloadable virtual clothing and accessories for avatars;

30. The Opponent submits that the Applicant's Class 9 goods, including "downloadable virtual clothing and accessories for avatars," "downloadable fashion images for use in virtual environments," and "digital-physical hybrid wearables", are closely connected to physical clothing in Class 25. Furthermore that "These items are typically offered as part of a coordinated brand strategy by the same commercial

¹² *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*

entities and promoted via the same trade channels, such as online platforms, social media, and digital streaming services.”¹³

31. I would agree with the Opponent insofar that the Applicant’s goods are in a different form, the above terms are virtual goods whereas the Opponent’s goods are physical goods. I do not consider that the goods share the same nature as their physical goods counterparts, as one exists in the virtual world and the other in the real world. Further, I do not consider that the goods share the same purpose or method of use. This is on the basis that whilst the goods may be worn by avatars in a virtual world, they will not be worn on the person in real life – their use exists in different realities. In the absence of evidence to the contrary, I do not accept that trade channels overlap. Whilst there may be a very general overlap in users, I do not consider that this is sufficient to substantiate any similarity between the goods. I therefore find the goods **dissimilar** to the Opponent’s real-world counterparts.

32. Insofar as the remaining “*video text and images; downloadable and streamed audio visual media and interactive content in digital formats;*” are concerned, I can see no overlap with the Opponent’s goods as set out in the above principles and therefore find these goods to be **dissimilar**.

downloadable virtual goods, namely digital music files, downloadable audio and video recordings, downloadable digital artwork,... downloadable multimedia files authenticated by NFTs

33. In relation to the above terms, firstly I note that the 12th edition of the Nice Classification applies the definition in the Merriam Webster Online Dictionary which states that a non-fungible token is “*a unique digital identifier that cannot be copied, substituted, or subdivided, that is recorded in a blockchain, and that is used to certify authenticity and ownership (as of a specific digital asset and specific rights relating to it)*”.¹⁴ Although the Applicant’s specification states that the relevant files are authenticated by NFTs, this authentication method does not alter the fundamental nature of the goods above. For the purposes of comparing the parties’ specifications, the fact that the downloadable virtual goods are authenticated by non-fungible tokens

¹³ Form TM7F para 23

¹⁴ [NFT Definition & Meaning - Merriam-Webster](#) accessed 01/05/2026 at 13.52

does not expand or change the scope of the terms. They remain, in substance, downloadable virtual goods, music and videos connected to an NFT to certify their authenticity and any rights that may relate to the digital asset.

34. I can see no overlap with the Opponent's goods as set out in the above principles and therefore find these goods to be **dissimilar**.

Digital physical hybrid wearables:

35. I consider the above goods to be an electronic technological device that can be worn on the body such as a wristwatch, ring or accessory with embedded digital technology such as sensors, processors and connectivity features which will keep track of their activity, their heart rate and pace etc. The Applicant's goods would be sold by undertakings which specialise in wearable technology, and the Opponent's goods would be sold by undertakings which sell clothing or sportswear. Although I do not discount that the contested goods may be sold in sports shops or department stores the goods would not be sold in close proximity.

36. The parties' goods clearly do not overlap in nature, method of use or purpose, neither are they in competition nor complementary. I note that the user may wear the Applicant's goods whilst wearing the Opponent's clothing or sportswear, however, this is not enough on its own to establish any similarity between them. The goods are **dissimilar**.

Class 25

37. The Applicant claims;

I confirm that I have no intention of trading in modestwear, swimwear, or any similar areas associated with the opponent's field ¹⁵. This is reiterated in the Applicant's email dated 20 July 2026;

For the avoidance of doubt, I do not seek protection for swimwear.

38. Regardless of the Applicant's intentions, protection is sought for the broad term "clothing" in the class 25 specification, which would encompass the Opponent's

¹⁵ Applicant TM8 .3

‘modestwear’ and ‘swimwear’. Additionally, as it was not made explicitly clear that ‘swimwear’ or any associated goods should be deleted from the specification, I am required to compare the goods and services as they are presented to me.

Clothing; headgear; underwear; swimwear

39. The above goods are explicitly named in both the Applicant’s and the Opponent’s specifications. They are self-evidently **identical**¹⁶.

*t-shirts; sweatshirts; hoodies; long-sleeve tops; crop tops; vests; singlets; tank tops; bodysuits; blouses; shirts; polos; knitwear; jumpers; cardigans; jackets; bomber jackets; varsity jackets; denim jackets; trench coats; overcoats; parkas; gilets; puffer jackets; raincoats; windbreakers; anoraks; coats; tracksuits; loungewear; base layers; thermal clothing; leggings; joggers; cargo trousers; tailored trousers; jeans; shorts; skirts; skorts; dresses; tunics; playsuits; jumpsuits; sleepwear; pyjamas; nightgowns; robes; dressing gowns; beachwear; sarongs; cover-ups; kaftans; socks; stockings; tights; leg warmers; gloves; scarves; snoods; shawls; wraps; branded merchandise clothing; artist-branded garments; jackets; dresses; T-shirts; trousers; stagewear; performance costumes; ritual garments; cloaks; ceremonial robes; art-inspired garments; limited edition fashion garments; limited edition fashion lines; streetwear; high fashion apparel; bespoke clothing; unisex clothing; gender-neutral clothing; sustainable and eco-conscious fashion*¹⁷

40. The Applicant’s goods all fall within the general category of “Clothing” in the Opponent’s specification. The goods are clearly identical on the principle outlined in **Meric**.

*Footwear*¹⁸; *footwear including boots; ankle boots; Chelsea boots; thigh-high boots; heeled shoes; loafers; brogues; Oxfords; trainers; sneakers; running shoes; sandals; sliders; flip-flops; slippers;*

41. The Applicant’s above goods would be sold through the same trade channels as the Opponent’s “clothing” goods, and the same retailers often sell a range of footwear

¹⁶ It is noted that ‘Clothing’ and ‘headgear’ appear as duplicates in the Applicant’s specification

¹⁷ It is noted that ‘hoodies’, ‘scarves’ appear as duplicates in the Applicant’s specification

¹⁸ It is noted that ‘Footwear’ appear as duplicates in the Applicant’s specification

and clothing items, being placed in close proximity. Whilst I acknowledge retailers who specialise in footwear alone, there are others who would offer both clothing and footwear. The users will plainly be the same. The method of use and purpose of the goods will overlap as they are all intended to be worn on the body for the purposes of warmth/protection (albeit they are worn on different areas). There may be some overlap in nature, where goods are made using the same materials. However, there is no degree of competition, nor is there any complementary relationship to be found. On balance, I find that these goods are similar to at least a **medium** degree.

hats¹⁹; caps; beanies; bucket hats; berets; headbands; bandanas; earmuffs; balaclavas;

42. The contested *hats; caps; beanies; bucket hats; berets; balaclavas*, which I shall refer collectively as *headwear*, serve the same purpose as the opponent's '*headgear*', namely covering and protecting the head or face of the human body and for fashion. The contested goods all fall within the general category of "headgear" in the Opponent's specification. The goods are clearly identical on the principle outlined in ***Meric***.

activewear; gym wear; cycling shorts; rash vests; performance wear;

43. I find that the Applicant's above goods fall within the more general category of goods covered by the Opponent's "*Sportswear*," there is identity between the respective goods on the principle outlined in ***Meric*** above.

44. If, however, I am wrong in my finding, I consider that they would certainly fall within the more general category of goods covered by the Opponent's "*Clothing*" on the principle outlined in ***Meric***.

bras; bralettes; knickers; boxers; briefs; shapewear; thermal underwear;

45. I find that as the Applicant's above goods all fall within the more general category of goods covered by the Opponent's "*Underwear*", there is identity between the respective goods on the principle outlined in ***Meric*** above.

¹⁹ It is noted that 'hats' appear as duplicates in the Applicant's specification

bikinis; swimsuits; one-piece swimsuits;

46. I find that the above goods all fall within the more general category of goods covered by the Opponent's "Swimwear" and therefore there is identity between the respective goods on the principle outlined in ***Meric*** above.

clothing and accessories featuring names, logos, symbols, graphics, or sigils associated with the Lyra Nox persona; garments incorporating AI-generated artwork and digital designs;

47. Before I conduct my goods comparison, I note that the above contested terms are items of clothing and accessories featuring '*names, logos, symbols, graphics, or sigils associated with the Lyra Nox persona*';'. I further note that restrictions should be drafted with sufficient clarity and precision to enable the Registrar and third parties to identify what is and is not covered by the specification (See IP Translator, C-307/10), and the way in which the proposed limitation is worded is insufficiently clear or precise. I also consider that limiting the goods, so that they are '*associated with the Lyra Nox persona*', is artificial and I bear in mind that a characteristic may be present or absent without changing the nature, function or purpose of the specified goods/services.²⁰ On the basis that the limitation does not identify a proper sub-category of goods, it will not be taken into account in my comparison.²¹

48. Therefore, the comparison I must make is '*clothing and accessories; garments incorporating AI-generated artwork and digital designs*' since the nature, function and purpose is not changed by the limitation '*featuring names, logos, symbols, graphics, or sigils associated with the Lyra Nox persona*'.

49. In regard to the Applicant's 'accessories' I bear in mind that I am able to treat ambiguous terms as '*relevant to the interpretation of the scope of the application*'.²² Consequently, the above contested goods are included in the Opponent's broad terms

²⁰ see Croom's Application [2005] R.P.C. 2 at paragraph 30

²¹ See Tribunal Practice Notice 1/2024: Restricting specifications of applications and registrations subject to Tribunal proceedings.

²² *Altecnic Ltd's Trade Mark Application* [2002] RPC 34 (COA)

'clothing' and therefore are considered identical in line with the principle set out in **Meric**.

50. For the sake of completeness, even if I took the Applicant's limitation into account, this would not affect my **Meric** finding on the basis identified above.

fashion accessories being parts of clothing, footwear or headgear;

51. By their nature, the Applicant's goods are not complete articles of clothing, footwear or headgear, but items intended to be incorporated into, attached to, or form part of such articles (for example, decorative or functional components). With respect to the Opponent's goods these would have the same users. Further, their nature and purpose overlap, to a degree, as the earlier goods are all *clothing, headgear, sportswear, swimwear and underwear* worn to cover the body and these accessories are also worn on the body/added to the worn goods to supplement or improve them in some manner. They would be sold through the same trade channels and appear in close proximity, with consumers likely to expect that they are made by the same or linked undertakings. The nature of an accessory is that it is a supplementary 'add-on', therefore I do not consider it important or indispensable to the goods for which it relates. I do not see the goods as complementary or in competition with each other. I consider that these would be similar to a **medium** degree to the Opponent's goods.

Class 41

Entertainment services; music entertainment services; live music performances; live vocal performances; DJ performances; provision of live and recorded musical entertainment; performance of music and singing; entertainment in the nature of live audio performances, visual performances and musical shows; organising and conducting concerts, gigs, festivals and tours; organising cultural events; providing entertainment via social media platforms;

52. The contested services comprise the provision of entertainment in the field of music and live performance, including live and recorded music, DJ and vocal performances, and the organisation of concerts, gigs, festivals and tours, as well as the provision of entertainment content via social media. As above, the Opponent states that '*it is common in this sector for Class 25 goods to be marketed as licensed*

merchandise arising from entertainment activities'. Taking into consideration notional use, I accept that that entertainment events such as concerts and festivals may sell an array of branded clothing, footwear or headgear for promotion purposes. A similar conclusion was reached by the Board of Appeal in a case (R 887/2018-2), where it was held that:

38.....It follows that the contested 'education, entertainment and sports; sports and fitness; providing sports entertainment via a website; sporting and cultural activities; entertainment, sporting and cultural activities; organizing and presenting displays of entertainment relating to style and fashion; organisation of events for cultural, entertainment and sporting purposes;' in Class 41 are similar to a low degree to 'clothing, headgear' in Class 25 to the extent that they include articles of sports attire covered by the earlier mark.

53. However, the nature, purpose and methods of use are very different, the Applicant's services are to hold live music and performance events, whilst the Opponent's goods are to be worn on the body, head, or feet, to cover the body. The goods and services may share the same trade channels; the goods sometimes being manufactured by the same company that would organise or sponsor a music or cultural activity, whether they are sold at the event or sold on the event's online store. The same end users would also be targeted. I do not find the goods and services complementary in nature as the goods are not important or indispensable to holding of music and cultural activities. Applying similar considerations to the above case, I find that there is a **low** degree of similarity between the contested services and the earlier goods '*Clothing*' in Class 25.

provision of online music, not downloadable; streaming of audio and video content for entertainment purposes; presentation of musical performances via global communication networks; provision of downloadable and non-downloadable media content; providing online non-downloadable videos, audio, and digital publications;

54. I can see no obvious overlap between the Applicant's above services and the Opponent's clothing goods on the basis of the above authorities. I therefore consider that the Applicant's services are **dissimilar** to the Opponent's goods.

songwriting; music composition;

55. The contested services are directed to the intellectual and artistic creation of musical content. The Opponent's goods are tangible clothing goods intended to be worn. The parties' goods, therefore, differ entirely in nature, purpose, method of use and trade channels and are neither complementary nor in competition. I find the parties' goods and services to be **dissimilar**.

music production; sound engineering; music recording services; audio and video recording services; multimedia production services; post-production editing services for music, video and film; creation and editing of audio-visual content; production and presentation of podcasts; production of music videos, visual art films and experimental content;

56. I would consider that the above services relate to the technical and creative production of music and audiovisual works. They encompass behind-the-scenes production activities such as music production, sound engineering, audio and video recording, post-production editing, and the creation of finished audiovisual outputs, including podcasts, music videos and experimental visual content.

57. In the absence of submissions from the Opponent addressing the specific services listed above and their respective similarities, I can see no obvious overlap, and on the basis of the above authorities, I therefore consider these services to be **dissimilar** to the Opponent's goods.

direction and production of digital performances, installations and immersive experiences; entertainment services featuring AI-generated media and visuals; presentation of performances using virtual reality, augmented reality and mixed-reality environments; creation of virtual concerts and metaverse-based entertainment; digital curation of exhibitions, art shows and audio-visual events; entertainment services incorporating symbolic, mythic or ritual themes;

58. The Applicant's above services comprise entertainment services, the Opponent's goods are finished consumer products intended to be worn. I can see no obvious overlap in nature, method of use, purpose or trade channels. The goods and services are not complementary or in competition. If there is an overlap in user (i.e. the general

public will wear clothing items and might also access some digital exhibitions); it's not enough for a finding of similarity or on the basis of the above authorities, I therefore consider these services to be **dissimilar** to the Opponent's goods.

publication of texts, books, poetry, lyrics, journals and zines; electronic publishing services; publishing of artistic and musical works;

59. I can see no obvious overlap, and on the basis of the above authorities, I therefore consider these services to be **dissimilar** to the Opponent's goods.

creation and distribution of branded artist content and merchandise tie-in media;

60. I consider the above service to involve the development and dissemination of promotional or entertainment content that is linked to a specific artist's brand or identity, and which is designed to support, promote or accompany merchandise associated with that artist. This may be in the form of videos, digital artwork, campaigns or promotional materials.

61. I compare this to the Opponent's relied upon goods. I do not consider there to be overlap on the basis of the above authorities. The only possible argument is on the basis of complementarity in that clothing may itself form part of an artist's merchandise tie-in media (its scope broader than primarily clothing), however, the goods/services can hardly be said to be important or indispensable for the use of each other. Whilst I bear in mind Mr Alexander's guidance as to not being too rigid in the assessment, I do not consider that there is any real complementary relationship between the creation and distribution of branded artist content and merchandise tie-in media, or entertainment services, and clothing. I therefore find the Applicant's services to be **dissimilar** to the Opponent's goods.

fan engagement and community-building experiences through digital entertainment; instruction and training in artistic performance, music, voice, and stagecraft; hosting of workshops, retreats, masterclasses, and community creativity events; consultancy and creative direction in the fields of music, performance, and visual art.

62. These services collectively concern the creation, delivery and facilitation of creative and educational experiences within the arts and entertainment sector. Their purpose is to develop artistic skills, fostering audience participation, and build creative communities. The services are provided through educational instruction, participatory events, digital platforms and expert consultancy, and are typically encountered by consumers seeking artistic development, creative collaboration and engagement.

63. I find that all the Opponent's Class 25 goods being: *Clothing; Headgear; Sportswear; Swimwear; Underwear*, do not overlap on the basis of the above authorities save for a very general overlap in user (i.e. the general public will wear clothing items and might also access some creative entertainment services); however, this is incidental and on its own is not enough for a finding of similarity and, therefore, I consider these goods to be **dissimilar** to the Opponent's goods.

Provision of interactive music experiences and virtual concerts; Provision of audio, music, video and multimedia entertainment content via streaming;

64. The above term does not encompass goods, nor do they involve the supply of tangible or downloadable products. I understand the "*provision of interactive music experiences and virtual concerts*" and "*Provision of audio, music, video and multimedia entertainment content via streaming*" to be digitally delivered or streamed musical content, events and performances that allow audiences to participate, engage or immerse themselves in live or recorded music, video and multimedia within online, interactive or virtual environments for the purposes of entertainment and enjoyment. I can see no overlap with the Opponent's goods as set out in the above principles and therefore find these goods to be **dissimilar**.

65. Under section 5(2)(b), a degree of similarity between the goods and services is essential for there to be a finding of likelihood of confusion: see paragraph 49 of *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA. In relation to the goods and services which I have found to be dissimilar, as there can be no likelihood of confusion under section 5(2)(b). I will take no further account of such goods and services, with the opposition failing to that extent.

66. The opposition remains 'live' for all terms that I have found to have some level of similarity with those of the Opponent.

Applicant backup specification

67. For the sake of completeness, I note that the Applicant, in its counterstatement, seems to provide a “backup specification.”²³ I note that the Applicant did not make an application to amend the specification by the filing of a Form TM21b during any point of the proceedings.

68. Whilst I acknowledge the Applicant’s proposed fall-back specification, I find that it is not acceptable. This is because the mere indication of “*Artistic and conceptual clothing, performance costumes, themed fashion accessories, and limited-edition garments connected with creative, musical, and energy-healing projects*” does not amount to a clear and precise limitation of the applied-for specification.²⁴ In any case, even if I were to accept the fall-back specification, this would still fall within the Opponent’s wider term “clothing” and, thus, be identical under the principles of *Meric*. Therefore, this would not put the Applicant in a better position.

Comparison of marks

69. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight

²³ “Class 25 may be limited to: “*Artistic and conceptual clothing, performance costumes, themed fashion accessories, and limited-edition garments connected with creative, musical, and energy-healing projects; none of the foregoing being modestwear or swimwear.*”

²⁴ For further guidance, please see Tribunal Practice Notice (“TPN”) 1/2024.

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.”

70. 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.

71. The respective trade marks are shown below:

The Applicant’s contested mark	The Opponent’s earlier mark
Lyra Nox	LYRA MODEST

72. With regard to the similarity of the marks the Opponent states the following;

“Visually, the marks are highly similar. Each begins with the identical and distinctive word “LYRA,” which appears first in both signs and is likely to attract the average consumer’s initial attention. The additional elements merely accompany and build upon this distinctive component. The respective second words are weak in nature, as they serve only to describe the goods and services concerned. In the Earlier Trade Mark, the second word refers to the fact that the Opponent’s goods are “modest”, whereas in the Opposed Mark, “nox” translates to “night” or “darkness” and merely alludes to the time of day for which the Applicant’s goods and services are intended to be used.

....

additional elements would be perceived merely as designating a particular product line under the “LYRA” brand.

Aurally, the marks are likewise highly similar. Both begin with the identical and distinctive element “LYRA,” which will be pronounced in the same way and is likely to dominate the consumer’s perception. This shared initial element establishes the same rhythm and sound pattern in both marks. The additional elements are weak or non-distinctive and will have only a limited impact on the overall aural impression. As the aural similarity derives from the coinciding distinctive element “LYRA,” the likelihood of confusion is further heightened.

Conceptually, the marks are very close, as both are built around the distinctive element “LYRA” which is a “a small constellation in the N hemisphere lying near Cygnus and Draco.” The additional words in each mark do not materially alter this meaning or the overall conceptual impression. Accordingly, the marks are identical at a conceptual level.”

73. With regard to the similarity of the marks the Applicant states the following;

“My mark is LYRA NOX, a two-word verbal mark. The opponent relies on a figurative mark containing the words ‘Lyra Modest’. The only shared element is ‘Lyra’. The second elements, Nox and Modest, are completely different in look, sound, and meaning. NOX (Latin for ‘night’) is distinctive and symbolic; MODEST is descriptive and laudatory for clothing. Overall, the marks create entirely different impressions and are unlikely to be confused by the average consumer.

....

The word Lyra refers to a constellation and is not unique to any one trader. LYRA NOX represents the concept of night stars or stellar harmony, relating to creative and musical work, not fashion. By contrast, Lyra Modest refers to modest fashion. The marks differ visually, aurally, and conceptually.”

74. The Opponent’s mark consists of the word “LYRA” presented in bold upper-case letters. To the right-hand side appears the dictionary word “MODEST”, displayed vertically and in a significantly small font type to that of “LYRA”. In its statement of grounds, the Opponent states that the shared “distinctive component” of both marks

is the word 'LYRA' on the basis that "the additional elements would be perceived merely as designating a particular product line under the "LYRA" brand".²⁵ To support this, the Opponent has referred to another of the Opponent's marks - "LYRA SWIMWEAR" (UKTM No. UK00003197266). I bear in mind that I am not obliged to consider an unrelated mark which does not form part of these proceedings and shall only consider the marks before me.

75. Whilst both words play a role in its overall impression, I would be inclined to agree with both the Applicant and Opponent that the word "modest" may be seen to be allusive to some of the goods applied for (I will discuss this further later in my decision). Due to its scale and position, I consider the word "LYRA" to have a greater impact on the overall impression of the mark and to be the dominant element. Although the word 'modest' will not be entirely unnoticed, it makes a significantly smaller contribution to the overall impression due to its size and positioning.

76. The Applicant's mark is a word only mark that consists of the word "Lyra" followed by the word "Nox"., the overall impression of the mark lies equally in the words "Lyra" and "Nox".

Visual comparison

77. As explained by the Appointed Person in *HERNO S.p.A. v Miss Sparrow Ltd*,²⁶ the form in which a word may be depicted on the Register is irrelevant, as a word mark is not limited to any specific script. It is therefore not legitimate to compare a word mark with a stylised word mark by reference to specific ways in which the word might be presented, since a word mark must be compared as the word itself, without reference to any particular presentation.

78. Accordingly, although the letters in the earlier mark as it appears on the Register is presented in a (minimal) stylised form, that stylisation does not constitute a point of distinction²⁷ from the contested word mark.

²⁵ TM7F Counterstatement – para 13

²⁶ BL O/954/22, in particular, at [23], [28], [34] and [37].

²⁷ Ibid. at [34].

79. Visually, the marks coincide in the word “LYRA” at the beginning of the marks, this is a point of visual similarity. This is an important point of coincidence, being where consumers tend to focus as this position is generally considered to have more impact due to consumers in the UK reading from left to right²⁸. However, the Opponent’s mark includes the word “MODEST” and the Applicant’s mark is followed by the word “NOX”, neither of which are visually similar and therefore act as visual points of difference. Consequently, I find that the marks are visually similar to a **medium** degree.

Aural comparison

80. Aurally, the words “MODEST” in the Opponent’s mark and “NOX” at the end of the Applicant’s mark will each be given its ordinary dictionary pronunciation. These words are aurally dissimilar. Furthermore, given its size, position and allusive, if not descriptive qualities, it is considered that a significant proportion of consumers are unlikely to verbalise the “MODEST” element of the Opponent’s mark. The mark will overlap however in the identical pronunciation of the first word in both the relied upon and contested mark, “LYRA”, pronounced ‘LIE – RUH’. I therefore find that the marks are aurally similar to a **medium** degree.

Conceptual comparison

81. 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*.²⁹ The assessment must, therefore, be made from the point of view of the average consumer.

82. Both marks share the same first word “LYRA”, which both parties acknowledge refers to a constellation. However, I am not persuaded that a significant proportion of the average consumer will recognise it as a constellation. In my view, the consumer will instead perceive it as an invented word with no immediately graspable meaning in either mark. The Applicant submits that ‘Nox’ is ‘*Latin for night*’³⁰ and the Opponent

²⁸ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02 at [81],

²⁹ [2006] ECR I-643; [2006] E.T.M.R

³⁰ Applicant counterstatement – .1

submits that “*nox*” translates to “*night*” or “*darkness*”.³¹ Whilst I acknowledge that ‘Nox’ is a dictionary word I am not prepared to accept that such a meaning will be immediately grasped by the average consumer. As such, I do not find that the combined elements “Lyra Nox” in the Applicant’s mark, form a unitary concept. I find instead each word to play an individual, distinctive role within the mark as a whole.³²

83. The Applicant states that ‘Lyra Nox’ *‘represents the concept of night stars or stellar harmony, relating to creative and musical work, not fashion’*³³, however in order make that connection, the average consumer would need to recognise the dictionary meanings of the constituent elements to immediately grasp that concept. Again, I do not consider that the average consumer will make this connection.

84. The concept of the Opponent’s mark lies in the words “LYRA MODEST”. I consider that “MODEST” in the context of the earlier mark may be understood by the average consumer to designate the style or characteristic of the clothing goods, for example, clothing that covers the body or avoids exposure and aligns with cultural/religious values etc. Therefore, this element is allusive/non-distinctive of some of the goods on offer³⁴. In comparing the marks at issue, I find that the shared element “LYRA” retains an independent distinctive role in both marks. To those consumers who recognise the meaning of the word “Nox”, the additional elements “Nox” and “MODEST” each introduce conceptual differences, although the impact of “MODEST” is limited due to its allusive nature.

85. As I have found above that a significant proportion of the average consumer would see “LYRA” as an invented word with no recognisable concept, then the overlapping element is conceptually neutral, to those consumers who recognise the meaning of “LYRA” as a constellation, this element is conceptually identical, The only concept I have found lies within the “MODEST” element of the Opponent’s mark, which plays no

³¹ Opponent Form TM7F Statement of Grounds – para 13

³² *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch).

³³ Applicant counterstatement – .2

³⁴ The Opponent submitted that ‘*the respective second words are weak in nature, as they serve only to describe the goods and services concerned*’- Opponent TM7F para 13, the Applicant submits that ‘MODEST’ is ‘*descriptive and laudatory*’ for clothing and refers to ‘*modest fashion*’. - Applicant TM8 counterstatement .1 -.2

part in the Applicant's mark. Taking all factors into account, I consider the marks to be conceptually similar to a **medium** degree.

Average consumer and the purchasing act

86. 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. 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.

87. I bear in mind the decision of the GC in *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)*, Joined cases T 1 17/03 to T-119/03 and T-171/03 (*"New Look"*), in which it commented:

"43. It should be noted in this regard that the average consumer's level of attention may vary according to the category of goods or services in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an Applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector."

88. With regard to the selection process, I also keep in mind the following passage from *New Look*:³⁵

"50. ...Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood of confusion."

³⁵ *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)* Joined cases T-117/03 to T-119/03 and T-171/03

89. The relevant goods include items of clothing accessories, footwear, sportswear, swimwear and headgear. The average consumer of such goods are likely to be members of the general public who will self-select the goods from the shelves or rails of a traditional clothing retail outlet or their online or catalogue equivalents. For online selections, the goods will be selected after consideration of images on webpages. For that reason, the marks' visual impact would likely carry the greatest weight during the purchasing process³⁶ though I do not discount the opportunity for aural recommendations in this field as advice may be sought from a sales assistant or representative. The goods may be purchased relatively frequently, though the cost can vary considerably. However, various factors are still likely to be taken into consideration during the purchasing process, such as aesthetics, fit, style, durability, and material. I find it likely that the average consumer will apply a **medium** degree of attention to the purchase of all of the Class 25 goods.

90. With regard to the overlapping entertainment services in class 41, the average consumer for the goods and services in common will be the general public with an interest in music. The services are most likely to be selected in person (at box office venues for example) online through brochures, over the telephone, or via word-of-mouth recommendations. Therefore, I consider the purchasing process for these services will combine both visual to aural considerations.

91. The average consumer of the entertainment services will also include online audiences who consume music and performance content digitally, such as livestreams, recorded performances, clips, and interactive entertainment shared on social media. I am of the view that the cost of these services will vary. For example, some entertainment performances may be offered free of charge, while others, such as concerts, may be relatively expensive, particularly for premium or popular events. Due to the breadth of the services at issue, the frequency with which they are selected will also vary. The average consumer will therefore wish to ensure that the services meet their individual needs and requirements.

³⁶ *New Look Ltd v Office for the Harmonization in the Internal Market (Trade Marks and Designs)*, Joined cases T117/03 to T-119/03 and T-171/03 ("New Look")

92. Overall, I consider the average consumer will pay at least a **medium** degree of attention when selecting the respective services.

Distinctive character of the earlier trade mark

93. 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 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).

94. 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).”

95. As these are fast track proceedings, the Opponent has filed no evidence to show that the earlier mark’s distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider.

96. The earlier mark consists of the words “LYRA MODEST”. As outlined above, the parties agree that “MODEST” is descriptive or laudatory in relation to clothing, and I

have likewise found it to be allusive of the type of clothing at issue. Consequently, although it will contribute to the overall impression of the mark, it plays a lesser role within it. By contrast, “LYRA” has no apparent relationship to the goods and is likely to be perceived by a significant proportion of consumers as an invented word. For those consumers, it will possess a relatively high degree of inherent distinctiveness. Given that “LYRA” performs an independent and dominant role within the mark and bearing in mind the guidance in *Kurt Geiger* that the distinctiveness of the common element is of particular importance, I find the earlier mark possesses a **medium to high** degree of distinctiveness overall.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

97. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the Opponent’s trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

98. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the respective marks visually and aurally similar to a **medium** degree.
- I have found the marks to be conceptually similar to a **medium** degree with the addition of the words “Nox” and “MODEST” providing a point of distinction.

- I have found the Opponent's mark to be inherently distinctive to a **medium to high degree** for the relevant goods relied upon.
- I have identified the average consumer for Class 25 '*Clothing; Headgear; Sportswear; Swimwear; Underwear.*' to be members of the general public paying a **medium** degree of attention, who will select the goods primarily by visual means, but I do not discount the aural component to the purchase.
- I have identified the average consumer for the remaining Class 41 terms I have found similarity with, to be members of the general public with an interest in music paying a **medium** degree of attention, who will select the goods primarily by visual and aural means.
- I have found the parties' goods in class 9 to be **dissimilar** to the Opponent's goods.
- I have found the parties' goods in class 25 to range from being similar to a **medium** degree to **identical**.
- I have found the Applicant's services in class 41 to be either **dissimilar** or similar to a **low** degree to the Opponent's goods.

99. I will consider direct confusion first. I acknowledge the main points of difference between the marks to be the presence of the second words "NOX" and "MODEST". Both marks share the first word "LYRA". For me to be satisfied that there is a likelihood of direct confusion requires me to find that the average consumer will overlook the presence of the word 'NOX' in the applied for mark and "MODEST" in the earlier mark.

100. In my view, the average consumer would unlikely overlook the presence of either of the secondary elements when the mark is viewed as a whole.

101. Although the additional element within the contested mark contributes less to the overall impressions of the mark, this is not negligible. This difference is, therefore, likely to be sufficient to prevent the average consumer from mistaking one for the other. It is my view that the net effect of the visual, aural and conceptual differences that I have identified is sufficient to prevent one mark being mistaken or mis-remembered

as the other. I find that there is no likelihood of direct confusion, even in respect of identical goods and services.

102. I now consider whether there is a likelihood of indirect confusion.

103. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the AP in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

104. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*³⁷

“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:

³⁷ BL O/375/10

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).”

105. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark, this is mere association not indirect confusion.³⁸

106. As previously stated, I note that the respective marks share the word “LYRA”, which I have found to be the more impactful element of the marks, particularly as it is the first word of each mark. Although LYRA has a dictionary meaning, a significant proportion of average consumers are likely to perceive it as an invented word. In the Applicant’s mark I have found that “Lyra Nox” will most likely be conceptualised as two invented words, that will not be seen as a unitary concept. Whilst the additional elements contribute to the overall impressions of the marks, they do not detract from the independent distinctive role played by the shared element “LYRA”.

107. The shared element, “LYRA”, is likely to be the point of coincidence that makes the strongest impression on consumers when comparing the marks. Given its conceptual and distinctive independence within each mark, I consider that the

³⁸ *Duebros limited v Heirler Cenovis GmbH*, BL O/547/17

average consumer will perceive "LYRA" as the primary point of commonality between the marks, with "NOX" and "MODEST" functioning as differentiating elements.

108. I note in *New Look Ltd v OHIM Cases T-117/03 to T-119/03 and T-171/03*, the General Court (GC) stated that;

“in the clothing industry, it is common for the same trade mark to have different configurations depending on the type of goods to which it refers and that sub-brands are often used to distinguish the different product ranges”

109. The common presence of the identical word “LYRA” remains a significant point of coincidence between the marks. Viewing the marks as wholes, I find that consumers are likely to perceive the applicant's mark as a variation of the earlier mark, NOX being perceived as a sub-brand or line identifier within a LYRA-branded range and consequently assume that the respective goods and services originate from the same or economically linked undertaking(s). Therefore, I find there is a likelihood of indirect confusion in respect of all goods and services similar to a low degree or above.

CONCLUSION

110. The opposition succeeds for the following goods which will be refused:

Class 25 Clothing; footwear; headgear; t-shirts; sweatshirts; hoodies; long-sleeve tops; crop tops; vests; singlets; tank tops; bodysuits; blouses; shirts; polos; knitwear; jumpers; cardigans; jackets; bomber jackets; varsity jackets; denim jackets; trench coats; overcoats; parkas; gilets; puffer jackets; raincoats; windbreakers; anoraks; coats; tracksuits; loungewear; activewear; gym wear; base layers; thermal clothing; leggings; cycling shorts; joggers; cargo trousers; tailored trousers; jeans; shorts; skirts; skorts; dresses; tunics; playsuits; jumpsuits; underwear;

bras; bralettes; knickers; boxers; briefs; shapewear; thermal underwear; sleepwear; pyjamas; nightgowns; robes; dressing gowns; swimwear; bikinis; swimsuits; one-piece swimsuits; rash vests; beachwear; sarongs; cover-ups; kaftans; socks; stockings; tights; leg warmers; gloves; scarves; snoods; shawls; wraps; hats; caps; beanies; bucket hats; berets; headbands; bandanas; earmuffs; balaclavas; footwear including boots; ankle boots; Chelsea boots; thigh-high boots; heeled shoes; loafers; brogues; Oxfords; trainers; sneakers; running shoes; sandals; sliders; flip-flops; slippers; stagewear; performance costumes; ritual garments; cloaks; ceremonial robes; fashion accessories being parts of clothing, footwear or headgear; branded merchandise clothing; artist-branded garments; clothing and accessories featuring names, logos, symbols, graphics, or sigils associated with the Lyra Nox persona; garments incorporating AI-generated artwork and digital designs; Clothing; footwear; headgear; jackets; dresses; T-shirts; trousers; hoodies; scarves; hats; performance wear; art-inspired garments; limited edition fashion garments; limited edition fashion lines; streetwear; high fashion apparel; bespoke clothing; unisex clothing; gender-neutral clothing; sustainable and eco-conscious fashion.

Class 41 Entertainment services; music entertainment services; live music performances; live vocal performances; DJ performances; provision of live and recorded musical entertainment; performance of music and singing; entertainment in the nature of live audio performances, visual performances and musical shows; organising and conducting concerts, gigs, festivals and tours; organising cultural events; providing entertainment via social media platforms;

111. The opposition is unsuccessful in relation to the following services, for which the application may proceed to registration:

Class 9 Sound recordings; downloadable music files; downloadable audio recordings; digital music downloadable from the internet; pre-recorded CDs; vinyl records; USB drives featuring audio recordings; digital audio

files featuring music; multimedia recordings containing music; video text and images; AI generated audio and music recordings; downloadable AI generated music and soundscapes; downloadable AI generated video and multimedia files; recorded media featuring performances generated or enhanced by AI; digital artwork and visual content generated by AI; digital content combining music or spoken word poetry or sound design created by AI; downloadable and streamed audio visual media and interactive content in digital formats; recorded performances including vocals instrumentals; ambient works and narrative compositions human or AI generated; downloadable virtual goods, namely digital music files, downloadable audio and video recordings, downloadable digital artwork, downloadable fashion images for use in virtual environments, downloadable virtual clothing and accessories for avatars, downloadable multimedia files authenticated by NFTs; digital-physical hybrid wearables;.

Class 41 songwriting; music composition; music production; sound engineering; provision of online music, not downloadable; streaming of audio and video content for entertainment purposes; presentation of musical performances via global communication networks; music recording services; audio and video recording services; multimedia production services; post-production editing services for music, video and film; creation and editing of audio-visual content; production and presentation of podcasts; provision of downloadable and non-downloadable media content; production of music videos, visual art films and experimental content; direction and production of digital performances, installations and immersive experiences; entertainment services featuring AI-generated media and visuals; presentation of performances using virtual reality, augmented reality and mixed-reality environments; creation of virtual concerts and metaverse-based entertainment; digital curation of exhibitions, art shows and audio-visual events; publication of texts, books, poetry, lyrics, journals and zines; electronic publishing services; publishing of artistic and musical works; creation and distribution of branded artist content and merchandise tie-in media; entertainment

services incorporating symbolic, mythic or ritual themes; instruction and training in artistic performance, music, voice, and stagecraft; hosting of workshops, retreats, masterclasses, and community creativity events; providing online non-downloadable videos, audio, and digital publications; fan engagement and community-building experiences through digital entertainment; consultancy and creative direction in the fields of music, performance, and visual art; Provision of audio, music, video and multimedia entertainment content via streaming; Provision of interactive music experiences and virtual concerts.

COSTS

112. Bearing in mind the scope of the goods and services applied for and the partial success of each party, I decline to favour either party with an award of costs.

Dated this 24th day of August 2026

Janeve Manca

For the Registrar