

O/0810/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS. UK00004108169 &
UK00004110808 BY LEE MURWIRA TO REGISTER:**

GOD>
GREATER THAN



(SERIES OF TWO)

AND

%
—
GOD
PART OVER WHOLE

AS TRADE MARKS IN CLASS 25

AND

**IN THE MATTER OF THE OPPOSITIONS THERETO
UNDER NOS. 452303 & 452302 BY
EVEDEN INC.**

BACKGROUND AND PLEADINGS

1. On 4 October 2024, Lee Murwira (“the applicant”) applied to register the first two trade marks (being those under no. 4108169) shown on the cover page of this decision in the UK (“the first application”). The first application was published on 8 November 2024 and registration is sought for the following goods:

Class 25: Clothing; footwear; headgear.

2. On 11 October 2024, the applicant applied to register the second trade mark (being that under no. 4110808) shown on the cover page of this decision in the UK (“the second application”). The second application was published on 8 November 2024 and registration is sought for goods identical to those in the first application.
3. Both of the applications were opposed on 31 January 2025 by EVEDEN INC. (“the opponent”). Both oppositions are based on sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The section 5(2)(b) ground of both oppositions is reliant upon the following trade mark:

GODDESS

UK registration no. 3172514

Filing date 1 July 2016; registration date 7 April 2017

Relying on all goods, namely:

Class 25: Articles of clothing; articles of outer clothing; sportswear and leisurewear; casual wear; headgear; none of the aforesaid being t-shirts, sweatshirts or baseball caps; articles of underclothing; footwear; swimwear; beachwear; corsetry; articles of lingerie; ladies' underwear; corsets; girdles; brassieres; ladies' foundation wear; hosiery; vests, knickers, petticoats; nightdresses; pyjamas

and housecoats; articles of knitted outerclothing; bathing suits; stockings and pantihose; bath robes.

("the opponent's mark").

4. In relying on the above mark, the opponent gave a statement of use confirming that it has used it in respect of "lingerie", "bras" and "sports bras". While these terms do not expressly appear in the opponent's specification, they do fall within a number of broader terms, such as "articles of clothing" and "articles of lingerie". As such, I am content to conclude that the statement of use remains valid.
5. The opponent's claim under the section 5(2)(b) ground is that the marks are similar and that the goods applied for are identical or similar/complementary to its own goods. The opponent contends that the shared use of 'GOD' will create a likelihood of confusion on the part of the public, including a likelihood of association.
6. Under the section 5(4)(a) ground, the opponent relies on the unregistered sign 'GODDESS', which it claims to have used throughout the UK since at least 2005 in respect of "lingerie", "bras" and "sports bras". As a result of this claimed use, the opponent alleges that it has generated a significant goodwill in its business. As such, use of the applicant's similar marks would cause the relevant public to believe that the applicant's goods were those of the opponent, or economically connected to it. It is claimed that such a misrepresentation could cause damage to the reputation and goodwill of the opponent.
7. The applicant filed counterstatements wherein he denied all of the claims made and, further, requested that the opponent provide proof of use for its mark.
8. Upon the filing of the counterstatement in defence of the applicant's second mark, these proceedings were consolidated in accordance with the power granted to the Registrar under Rule 62(1)(g) of the Trade Marks Rules 2008. This was communicated to the parties via written correspondence on 7 August 2025.

9. The opponent is represented by Mathys & Squire LLP and the applicant is unrepresented. The opponent filed evidence and, in doing so, also filed written submissions. While he did not file evidence, the applicant did file written submissions during the evidence rounds. No hearing was requested and both parties filed written submissions in lieu of the same. This decision is taken after 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.

EVIDENCE

11. The opponent's evidence came in the form of the witness statement of Vaughan Waylett dated 6 October 2025. Mr Waylett is the Finance Director of the opponent, a position he has held since 1 April 2016. His evidence is accompanied by 11 exhibits, being VL01 to VL11, and was adduced in order to demonstrate genuine use of the mark relied upon and that the opponent's business enjoys the benefit of a protectable goodwill.
12. I do not intend to discuss the opponent's evidence in full at this point (or the submissions of the parties, for that matter) but will, where necessary, discuss it below.

DECISION

Proof of use

13. As set out above, the opponent gave a statement of use in respect of the terms “lingerie”, “bras” and “sports bras”. The effect of giving such a statement in respect of a mark that has been registered for more than five years before the application date or priority date of an opposed mark is to essentially limit the scope of the section 5(2)(b) ground so that it is reliant only upon the goods covered by the statement of use. As above, the applicant requested the opponent to prove that it has genuinely used its mark.

14. While the issue of proof of use is technically live, I note that the applicant has accepted that the opponent’s evidence of use proves use of ‘bras’, ‘lingerie’, ‘shapewear’ and ‘intimate apparel’.¹ Whilst the latter two terms are not at issue, the former two are. As such, I take it that the applicant has conceded that the opponent has genuinely used its mark for “bras” and “lingerie”. Given that this represents two of the three terms for which use is claimed (the opponent having claimed use in relation to registered terms, i.e. ‘articles of lingerie’, or goods which fall within the registered terms, i.e. ‘bras’ and ‘sports bras’ being articles of lingerie) and given that the third term for which use is claimed, i.e. “sports bras”, will, under the fair and notional use of “bras”, remain covered by the opponent’s specification, I consider that the applicant has conceded genuine use for all of the three terms claimed by the opponent (i.e. “lingerie”, “bras” and “sports bras”). However, ‘sports bras’ being a sub-category of ‘bras’, does not add anything to the opponent’s case when it comes to the assessment of the similarity of the goods – hence I will disregard it. Accordingly, I will forego the proof of use assessment. Therefore, I will proceed directly to the section 5(2)(b) ground of opposition.

¹ See paragraph 4.1 of his submissions dated 8 December 2025.

Section 5(2)(b): legislation and case law

15. Section 5(2)(b) of the Act reads as follows:

“(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.”

16. 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.”

17. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

[...]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

18. Given its filing date, the opponent’s mark qualifies as an earlier trade mark in accordance with the above provisions. While it did complete its registration and is subject to the use provisions set out in section 6A of the Act, I have foregone the proof of use assessment for the reasons set out at paragraph 14 above. The consequence of that approach is that the present ground may proceed in reliance upon the term “lingerie” and “bras”.

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 Pairs Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, 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. As above, the goods in the applicant's specifications are identical. The competing goods are, therefore, as follows:

The opponent's goods	The applicant's goods
<u>Class 25</u> Lingerie; bras.	<u>Class 25</u> Clothing; footwear; headgear.

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

“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”.

22. 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.

23. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court 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.”

24. The applicant’s position is that the goods at issue are functionally different, are marketed through different retail channels, are purchased for entirely different purposes and are directed at different consumer expectations. He, therefore, claims that there exists no similarity between the goods at issue. The opponent’s position is that the opponent’s goods are included in the remit of the applicant’s “clothing” goods and, as for the “footwear” and “headgear” terms, they are highly similar.

25. Dealing with the term “clothing” first, I appreciate the applicant’s comments but the terms “lingerie” and “bras” in the opponent’s specification are both types of clothing. They, therefore, fall within the broad scope of the applicant’s goods meaning that these goods are identical under the principle outlined in *Meric*.

26. As for “footwear” and “headgear”, these do not encompass the opponent’s goods of “lingerie” or “bras”. The goods are clearly different in nature and while they have some overlap in method of use, this is simply down to the fact that they are all worn on the body. As such, I do not find that to be a compelling overlap. In terms of purpose, both parties’ goods may be worn for aesthetic purposes, as well as practical. Therefore, I accept that there is some degree of overlap in this factor. As for trade channels, I appreciate that some of the larger manufacturers will produce lingerie, bras, footwear and headgear. However, I have nothing before me to suggest that this is common across the trade. Further, even if such goods are sold through the same retailers, they are not likely to be found in close proximity to one another. As for users, I accept that someone looking to buy lingerie or bras is likely to also require headgear and footwear. On this point, however, given the size of the user base for both parties’ goods, I do not consider this overlap to be particularly pronounced. The goods are not in competition and while I note that the

opponent submits that the goods are complementary, I do not agree. This is because whilst the goods may, of course, be purchased together, they are not important to one another to the point that consumers would think they were the responsibility of one undertaking.² Overall, bearing in mind the limited nature of the overlaps discussed, I find that these goods are similar to a low degree.

The average consumer and the nature of the purchasing act

27. 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.

28. In *Iconix* (cited above), 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

² As per the test in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM), Case T-325/06

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.

29. The goods at issue are those that will be selected by the general public at large. They will be available via a range of general clothing retailers (as well as more specialist lingerie retailers, for example) and their online equivalents. In physical stores, the goods will be displayed on shelves or racks where they will be self-selected by the consumer. A similar approach will follow for online sales in that the consumer will select the goods having viewed images of them on a website. As a result, I find that the visual component will dominate the selection process of the goods at issue. Having said that, I do not discount an aural component playing a part, as a result of advice from sales assistants or word of mouth recommendations.

30. The goods at issue cover a range of clothing, headgear and footwear items so are likely to be selected relatively frequently. I consider that the costs of the goods at issue will vary quite considerably from cheap goods such as socks to relatively expensive items such as designer clothing, for example. In respect of the level of attention paid when selecting the goods at issue, I consider that consumers will

pay attention to factors such as materials used, style and suitability. These are ordinary factors and I consider that they will also be taken into account in circumstances where the consumer selects goods that are more expensive and/or purchased on a less frequent basis. That being said, I do appreciate that some of the lower cost goods (such as socks, for example) may be selected with a lower degree of attention. To conclude, I find that the level of attention will, for the most part, be medium but where cheaper goods are selected, it may fall to a lower degree (but not outright low).

Comparison of the marks

31. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

32. 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 relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

33. It would be wrong, therefore, to artificially dissect the trade marks, 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.

34. Save for the fact that the first mark consists of black elements on a white background whereas the second is white elements on a black background, the marks of the first application are identical. On this point, black and white marks are duly protected for use in any colour meaning that for the purposes of this decision, the marks are the same. Therefore, for ease of reference, I will simply assess the first mark of the first application and refer to it as ‘the applicant’s first mark’.³ I will also refer to the mark in the second application as ‘the applicant’s second mark’. I will apply these definitions throughout the remainder of my decision.

35. The respective trade marks are shown below:

The opponent’s mark	The applicant’s marks
GODDESS	The logo consists of the word 'GOD' in a bold, sans-serif font, followed by a right-pointing chevron '>'. Below this, the words 'GREATER THAN' are written in a smaller, all-caps, sans-serif font. ("the applicant’s first mark") The logo features a large percentage symbol '%' above a horizontal line. Below the line is the word 'GOD' in a bold, sans-serif font. At the bottom, the words 'PART OVER WHOLE' are written in a smaller, all-caps, sans-serif font.

³ For the avoidance of doubt, my findings in respect of this mark throughout the entirety of my decision apply to them both.

	(“the applicant’s second mark”)
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36. I have submissions from both parties as to the similarity of the marks at issue. I can confirm that I have taken these submissions into account and whilst I will not discuss them in any detail here, I will, if necessary, address them below.

Overall impression

37. The opponent’s mark is a word only mark that consists solely of the word ‘GODDESS’. There are no other elements that contribute to the overall impression of the mark, which lies in the word itself.

38. The applicant’s first mark is a figurative mark consisting of the element ‘GOD>’ presented in a large black, standard typeface, which sits in the centre of the mark. Below this, and presented in a much smaller standard, black typeface are the words ‘GREATER THAN’. The opponent submits that the consumer is likely to pay less attention to ‘GREATER THAN’ due to its size. While I accept the difference in sizes between ‘GOD>’ and ‘GREATER THAN’, I am of the view that consumers will not disregard the smaller words and, in reading them, will understand the overall message of the mark (which I will elaborate on below). They are not, therefore, simply words that combine to form a strapline but, instead, contribute to the overall message of the mark as a whole. In my view, this is reinforced by the fact that the largest element is not simply the word ‘GOD’ but ‘GOD>’ with the ‘>’ sign being one that is commonly understood as meaning ‘greater than’. As a result, I find that the overall impression of the mark lies in the totality of all of its elements.

39. The applicant’s second mark is also a figurative mark that consists of black, standard textual elements on a white background. The larger elements in the mark are a ‘%’ sign, a horizontal line and the word ‘GOD’. I consider that these elements

combine to form one element and will be viewed as a type of mathematical formula. Below this element are the words 'PART OVER WHOLE' which are presented in a much smaller typeface. I consider that the largest element, being the formula element, will dominate the overall impression of the mark and while the words 'PART OVER WHOLE' play a lesser role to this element, they do (for reasons I will come to discuss below) reinforce the meaning of the mark as a whole and, therefore, will not be perceived independently within the mark.

Visual comparison

40. Visually, the marks all share the letters 'G-O-D'. This makes up the largest verbal element within the applicant's marks and forms the first three letters of the word in the opponent's mark. The marks differ in the presence of the letters 'D-E-S-S' that sit after 'G-O-D' in the opponent's mark and the various additional words/elements in the applicant's mark, being the '>' sign and the words 'GREATER THAN' in his first mark and the '%' sign, the horizontal line and the words 'PART OVER WHOLE' in his second mark. The '>' in the applicant's first mark and the '%' sign and horizontal line in his second are all visually prominent elements (due to their size and contribution to the overall impression of the said marks) so will clearly contribute as significant points of difference. I accept the additional words in the applicant's marks are much smaller, but they will not be overlooked and will, therefore, contribute to the visual impression. Overall, I accept that the shared letters of 'G-O-D' will clearly be noticed but so too will all of the additional elements across all marks. As such, I find that the marks at issue are visually similar to between a low and medium degree.

Aural comparison

41. The opponent submits (at paragraph 20 of its written submissions dated 7 October 2025) that the marks in question would be spoken by referring to the words 'GOD' and 'GODDESS'. It appears that the opponent's position is advanced via a claim

that, when hearing the marks, consumers would focus on the mutual word 'GOD'. I accept that the '>' and '%' signs will not be articulated in either of the applicant's marks.⁴ However, I disagree with respect to the verbal elements, being 'GREATER THAN' in the first mark and 'PART OVER WHOLE' in the second. Despite being presented in a smaller typeface, these are not descriptive elements that the consumer would disregard from their pronunciation of the marks (or ignore when hearing the marks). Further, I do not consider them to be promotional straplines or taglines that would also likely be disregarded or overlooked. Instead, they form part of the overall message of the marks and, as such, will be articulated.

42. As a result of the above, the applicant's marks will be pronounced in full, namely as 'GOD GREATER THAN' for the first mark or 'GOD PART OVER WHOLE' for the second. Comparing this with the two syllable 'GODDESS' of the opponent's mark, I accept that they share their first syllable. This is where the similarity ends because the remaining aural elements of all marks differ entirely. These will clearly be noticed. Taking all of this into account, I find that the marks at issue are aurally similar to a low degree.

Conceptual comparison

43. The opponent submits that the marks are conceptually similar due to the elements 'GODDESS' and 'GOD'. In support of this position, the opponent has provided dictionary definitions for the words (taken from the Collins Dictionary and the Cambridge Dictionary, respectively).⁵ GOD is shown as meaning *a spirit or being believed to control some part of the universe or life and often worshipped for doing so*. GODDESS is shown as meaning *a female spirit or being that is believed to have power over a particular part of the world or nature*. I accept that both of these definitions will be known but they are not necessarily directly applicable to the

⁴ In respect of the '>' sign, because it will be understood as meaning 'GREATER THAN', and because those words follow this element, I do not see any reason why consumers would seek to articulate such words twice.

⁵ See Annex 01 and 02 of its submissions dated 7 October 2025

present assessment. The reasons for this will become apparent when I discuss the separate marks at issue below.

44. 'GODDESS' is the only conceptual element of the opponent's mark. While the meaning above is noted, it is not the meaning that will come to mind when consumers view the mark on the goods upon which the opponent relies. The goods at issue are relevant here because, as per the comments of Mr Thomas Mitcheson KC, sitting as the Appointed Person, at paragraph 32 of *LIGHT VITAMIN* (BL O/1174/25), an assessor should normally consider if the goods have a potential effect on conceptual meaning as a result of any link or allusion between the mark and the goods. In the present case, the opponent's goods are lingerie and bras and the word 'GODDESS' on such goods will, in my view, convey a laudatory message that will bestow a feeling of the user gaining power, strength or beauty when wearing the goods or that, when wearing them, they will be adored or idealised. Such a finding is supported by the dictionary definitions put forward by the opponent, one of which refers to a *woman that is greatly admired for her beauty or one that is adored or idealised*.⁶

45. The applicant's marks do not simply convey the idea of a deity in the way described at paragraph 43 above. I accept that a reference to a deity will be noted but the marks, as wholes, convey different messages. As for the applicant's first mark, this will convey the message of 'GOD GREATER THAN' which will be immediately understood as a religious message that 'God is greater than something (or possibly anything and everything)'. Even if consumers do not understand this solely from the 'GOD>' element, they will read the mark in full and understand said message when reading the words 'GREATER THAN'. For the avoidance of doubt, it is this overall message that, in my view, supports my above finding that the overall impression of the mark lies in the totality of its elements.

⁶ See the various definitions provided in Annex 01

46. As for the second mark, this will also convey a religious message in that God is the 'whole' and that something (or anything and everything) else is simply a part (or a 'percentage') of that 'whole'. This finding is supported by the fact that the dominant element of the second mark is an altered representation of the formula for *part over whole* which is commonly illustrated as '%/100'. In this case, the replacement of '100' by the word 'GOD' will imply the same message set out above, namely that something is a part of God. As was the case with the applicant's first mark, if this message is not identified from the formula alone, the words 'PART OVER WHOLE' will reinforce this meaning. Even if I am wrong on this point and the specific conceptual message is lost on some consumers, the overall concept will be one of a message about the omnipresence of God.

47. In comparing the marks, the applicant's marks both clearly convey some form of religious message about God which is distinct from the message of the opponent's mark, especially in context of the goods relied upon. That being said, the connection to a deity (regardless of its gender) will still result in a point of conceptual similarity, but not a significant one. Overall, I consider that the marks are conceptually similar to a low degree.

Distinctive character of the opponent's mark

48. 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).

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)."

49. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use. Given that the opponent has filed evidence of use, I will consider whether said use is sufficient to enhance the distinctiveness of its mark. Before doing so, however, I will consider the inherent position.

50. The opponent's mark is a word only mark consisting solely of the word 'GODDESS'. This word will be known to consumers and will carry multiple meanings. However, in the context of the goods relied upon by the opponent, I consider that consumers will view 'GODDESS' as carrying a laudatory message that will convey the impression that by wearing the goods, the user will feel some sense of power, strength or beauty (being virtues commonly understood to be possessed by goddesses). Alternatively, the message may also be one of the user, by wearing the goods, being adored or idealised. This message is one that will

impart a lower degree of distinctive character on the mark. That being said, the mark is not directly descriptive so I do not consider that this extends to outright low. Instead, I consider that it will sit at somewhere between a low and medium degree.

51. I turn now to consider the position regarding an enhanced distinctive character.

The evidence sets out that the opponent specialises in apparel for women, particularly swimwear and lingerie. Images of the goods offered by the opponent between 2019 and 2024 are provided via printouts from the opponent's website.⁷ It is noted that these show a range of different bras and briefs/underwear. In respect of this website, the opponent has provided evidence regarding its UK visitor figures for 2019 to 2023. These are as follows:

Year	UK visitors
2019	3,867
2020	13,561
2021	27,235
2022	51,000
2023	61,111
Total:	156,774

52. Screenshots taken from a range of different online retailers are provided in evidence.⁸ These were obtained from the internet archive facility, the Wayback Machine, and show dates prior to the relevant date. These all show a range of bras and briefs/underwear. It is noted that there is a printout provided in evidence showing the total turnover accrued via these third-party retailers between 2021 and 2023.⁹ While the turnover for each retailer is redacted, the total figures for all of them are provided. These are as follows:

⁷ VW02

⁸ VW03 part 1

⁹ VW03 part 2

Year	Turnover (£)
2020	188,618.20
2021	360,303.80
2022	393,783.11
2023	387,413.49
Total:	1,330,118.60

53. A range of brochures are provided that show further examples of the goods offered by the opponent. These brochures are dated between 2019 and 2024 and show a range of different bras and briefs/underwear.¹⁰ It is stated that between 2018 and 2023, a total of 2,707 copies of these brochures were distributed to customers in the UK. The evidence goes on to discuss the spend associated with creating these brochures and it is noted that between 2018 and 2023, the opponent spent a total of £235,184.12 on them. It is noted that this total covers the entire spend, including the photographer costs, model costs and printing costs, amongst others.

54. The brochures discussed above are confirmed as being released to coincide with the seasons of spring/summer (SS) and autumn/winter (AW). It is noted that there are a range of press releases issued by the opponent covering the releases of the AW18 to SS22 brochures.¹¹

55. In respect of press coverage, the opponent has provided a range of articles from publications such as 'The Lingerie Addict', 'Underlines', 'Stars Underlines' and 'Fashion Network'.¹² The narrative evidence sets out that these are well-known publications. While this is noted, there is nothing before me speaking to their readership in the UK, so I am unable to confirm this point. This same evidence also includes screenshots of YouTube videos regarding 'GODDESS' bra fitting guides. It is noted that the videos shown have attracted 121,556 and 305,000 views. While

¹⁰ VW04

¹¹ VW06

¹² VW07

I appreciate the viewing figures for these videos, the account that posted them is 'Wacoal Europe' and given the international nature of YouTube, it is likely that a proportion of the viewers were from outside the relevant territory for the present assessment, being the UK. Without any evidence to assist on this point, I have no way of determining the precise level of views that came from UK users.

56. In respect of the opponent's marketing activities, I note that evidence has been provided regarding the opponent's attendance at trade shows. One of these is the INDX INTIMATE APPAREL event in the West Midlands in 2022 and 2023.¹³ While this is noted, there is nothing before me to suggest the level of attendance by consumers at this event or how much exposure it generated for the opponent. This same evidence also includes reference to an event in France, being the Salon International de la Lingerie.¹⁴ The narrative evidence refers to a printout that confirms that this event attracts customers from the UK. While I note that the printout does say that the event brings together nearly 65% of international buyers from 20 countries, no UK-specific data is provided so it is not possible for me to determine the level of exposure this event had in the UK market.

57. The evidence provides figures as to the opponent's turnover for the years 2018 to 2024.¹⁵ These are shown as covering all of the UK (including Northern Ireland) and are as follows:

Year	Turnover (£)
2018	432,940
2019	335,267
2020	297,003
2021	294,179
2022	475,937

¹³ Pages 2 to 16 of VW11

¹⁴ Pages 17 to 23 of VW11

¹⁵ VW08

2023	474,213
2024	834,983
Total	3,144,522

58. In support of the above turnover, the opponent has provided a number of sample invoices for the sale of goods to customers in the UK.¹⁶ The invoices are, themselves, supported by screenshots from the opponent's website showing goods that share the same product numbers as those covered by the invoices.¹⁷ It is noted that these screenshots show a range of bras.

59. Whilst on the topic of the turnover, I am of the view that because the figures reproduced at paragraph 57 above are said to represent all sales in the UK, I consider that they include the other turnover figures from third-party retailers, being those set out at paragraph 52 above.

60. Lastly, the opponent has also provided a 25-page list of sales data and product codes for sales made in 2024.¹⁸ This data is, seemingly, a breakdown of every product sold in the UK during that year and ends with a total sales figure of £834,983 which is identical to that shown for 2024 in the table at paragraph 57 above.

61. Taking all of the evidence into account, it is clear that the opponent operates a business in the UK selling bras and female underwear. Whilst the use before me is relatively long standing, covering a period of seven years, the overall turnover figure of £3.1 million is low. Even if I were wrong to take the turnover at paragraph 57 above as encompassing the turnover at paragraph 52, the overall turnover would, at best, be £4.4 million. In the context of the clothing market or even the

¹⁶ VW09 part 1
¹⁷ VW09 part 2.
¹⁸ VW10

women's underwear or lingerie market,¹⁹ this is reflective of a small business operation. On this point, I appreciate that I have no evidence as to the size of these markets but consider that they are likely to be very large markets with annual turnover in the multiple millions or even billions of pounds. As such, I am of the view that even taking into account the website visit figures, the press coverage and the marketing spend of the opponent (none of which are particularly compelling), I find that the evidence fails to demonstrate that the opponent's mark enjoys an enhanced degree of distinctive character. As such, the inherent position applies which, as above, is that the distinctiveness of the mark sits at somewhere between a low and medium degree.

Likelihood of confusion

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

¹⁹ It is noted that the opponent states that it operates in the niche plus-size market. This is noted but I disagree that this is the relevant market for the purposes of this assessment. I say this because regardless of the size of the person looking to buy the goods, they remain ordinary goods that belong in the general market. As such, I do not consider that the size of clothing goods is something that narrows the scope of the market and, if anything, the size of the goods is all relative in that what one brand may consider 'plus size', another brand may not.

marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

63. I found the goods to be either identical or similar to a low degree. The average consumer base for the goods at issue will be members of the general public who will select them via primarily visual means (though I do not discount an aural component) whilst paying mostly a medium degree of attention. On this point, I remind myself that some goods will attract a lower (but not outright low) degree of attention. I have found the marks at issue to be visually similar to between a low and medium degree and aurally and conceptually similar to a low degree. Lastly, I have found the opponent's mark possesses a low to medium degree of inherent distinctive character. On this point, I remind myself that a weaker degree of distinctive character does not preclude a finding of a likelihood of confusion.²⁰

64. Taking all of the above into account, I do not consider that consumers would misremember or inaccurately recall the parties' marks for one another. In short, the differences between them would not be overlooked or misremembered and, as such, consumers would readily be able to recall which mark was which, even when viewed on identical goods or in circumstances where they are paying a lower degree of attention. Even if it were the case that consumers overlooked the differences in the additional elements of the applicant's marks, they would not misremember which mark was 'GOD' and which was 'GODDESS', especially when taking into account the allusive nature of 'GODDESS' on lingerie and bras. Consequently, I find that there is no likelihood of direct confusion.

65. I will now proceed to consider a likelihood of indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

²⁰ *L'Oréal SA v OHIM*, Case C-235/05 P

“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)”.

66. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.
67. 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.
68. The opponent has put forward a number of submissions in respect of the issue of indirect confusion. I have given them due consideration and consider that they are of no real persuasive value here because they mostly stem from the opponent’s position that the marks are highly similar or that the additional elements in the applicant’s marks are descriptive, which they are not. In short, I do not intend to discuss them all here but I will briefly address two points below.
69. Firstly, the opponent submits that the *Medion* principle applies.²¹ I see no basis for this argument. I say this because the conceptual impression of the applicant’s marks is such that consumers would not believe that the word ‘GOD’ enjoyed distinctive significance which was independent of the significance of the whole of either mark. As above, each of the applicant’s marks convey an overall message in relation to God and the average consumer would, therefore, perceive the marks as wholes. Even if it were to be the case that consumers would perceive the marks in the way suggested by the opponent, it does not automatically follow that there

²¹ The correct approach to which was set out by Arnold J (as he then was) at paragraphs 18 to 21 in the case of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)

is a likelihood of confusion as it remains necessary for me to carry out a global assessment taking into account all of the relevant factors,²² which I will do below.

70. Secondly, the opponent argues that the addition of 'GREATER THAN' and 'PART OVER WHOLE' in the applicant's marks are descriptive elements and that they should be treated as indicators of separate brands. In support of this argument, the opponent relied on the case of *Aveda Corporation v Dabur India* [2023] EWHC 589 (Ch). In that case, the mark at issue was 'Dabur Uveda' and 'Dabur' was found to be the house brand, followed by the element 'Uveda'. Clearly, any application to such a mark cannot be said to automatically apply here because, in the present case, the applicant's marks are not on all fours with the mark 'Dabur Uveda' and I see no reason why this would mean that 'GOD GREATER THAN' and 'GOD PART OVER WHOLE' were indicators of a sub-brand. In my view, they are not.

71. In looking at the issue of indirect confusion generally, I appreciate that consumers would notice the shared use of the letters 'G-O-D' across the parties' marks. If the marks at issue were simply 'GOD'²³ and 'GODDESS' then I see some merit in an argument that the goods under 'GOD' were aimed at men and those under 'GODDESS' being aimed at women, thereby leading to a logical indication of a sub-brand. However, that is not the issue before me. Instead, the marks must be considered in their entirety and, as set out above, this creates significant differences between them. Put simply, I see no reason why consumers would believe that the marks originated from the same or economically linked undertakings. The conceptual message across the marks at issue is distinct enough to lead consumers to believe that the marks' shared reference to a deity is purely coincidental and entirely unremarkable from a trade mark perspective. As I have discussed above, the opponent's mark, on the goods at issue, will carry a message relating to beauty, power or being admired. This concept is entirely lacking in the applicant's marks as, instead, they both carry some religious

²² See paragraph 21 of *Whyte and Mackay*

²³ Notwithstanding any potential issues with the registrability of the word 'GOD' solus as a trade mark.

message about the presence or greatness of God. In this context, I see no realistic basis as to why consumers would think that the marks share a common origin, even when viewed on identical goods or in circumstances where the consumer pays a lower degree of attention. Consequently, I find that there exists no likelihood of indirect confusion. Accordingly, the oppositions based on section 5(2)(b) fail in their entirety.

Section 5(4)(a)

72. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

73. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

74. I can deal with the present ground swiftly. I have summarised the opponent’s evidence at paragraphs 51 to 60 above. I do not intend to repeat that evidence here but, in short, I am satisfied that a goodwill existed in the opponent’s business

in respect of the goods relied upon as at the relevant date.²⁴ While that may be the case, this ground takes the opponent no further than the section 5(2)(b) ground. I say this because whilst the test for misrepresentation is different from that for likelihood of confusion in that it entails “deception of a substantial number of members of the public” rather than “confusion of the average consumer”, it has been acknowledged that they are unlikely to produce different outcomes in practice.²⁵ I find that to be the case here. As such, the claim under this ground follows the outcome of the section 5(2)(b) ground meaning that there exists no misrepresentation between the marks and the sign relied upon. The present ground, therefore, fails.

CONCLUSION

75. The oppositions against both applications fail in their entirety and, subject to any successful appeal of my decision, the applicant’s marks may all proceed to registration for the goods applied for.

COSTS

76. As the applicant has succeeded, he is entitled to a contribution towards his costs. On this point, I note that the applicant was unrepresented during these proceedings. As such, any costs award is to be awarded in line with the ordinary approach for litigants in person. In order for a litigant in person to claim costs in Tribunal proceedings, they are required to file a costs proforma setting out the time undertaken for certain tasks associated with the proceedings. In the present case, the applicant claims that he spent the following number of hours for the work undertaken in these proceedings.

²⁴ I remind myself that whilst I found the evidence insufficient for a finding of enhanced distinctiveness, the bar for proving goodwill is far lower. On this point, see *Hart v Relentless Records* [2002] EWHC 1984 (Ch) and *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, for examples on the bar the existence of goodwill under the present grounds.

²⁵ *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501

Notice of defence:	2.5 hours
Considering forms filed by the other party:	2 hours
Considering the opponent's evidence:	3 hours
Considering the opponent's submissions and annexes:	3 hours
Preparing written submissions filed during the evidence rounds:	4 hours
Preparing written submissions in lieu of a hearing:	2 hours
Total:	16.5 hours

77.I consider the time claimed to be reasonable. Practice Direction 46.5 of the Civil Procedure Rules (as it stood at the time these proceedings were commenced) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. I see no reason to award anything other than this. I therefore award the applicant the sum of £313.50 (16.5 hours at £19 per hour) in respect of his costs.

78.I hereby order EVEDEN INC. to pay Lee Murwira the sum of £313.50. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 7th day of September 2026

A COOPER
For the Registrar