

o/0840/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004172993

BY NEAL'S YARD (NATURAL REMEDIES) LIMITED

TO REGISTER THE TRADE MARK:

ARDEO

IN CLASSES 3 & 4

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 454362

BY ARTDECO COSMETIC GMBH

Background and pleadings

1. On 13 March 2025, Neal's Yard (Natural Remedies) Limited ("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 28 March 2025. Registration is sought for the following goods:

Class 3: Perfumes, perfumery, eau de parfum, after-shave lotions; cleansers such as body washes, shower oils; body polishes and scrubs; bath salts; foaming baths; bath oils; body moisturisers; body and massage oils; hand washes; soaps; hand creams and lotions; perfumed oils; hair perfume; scents in the form of toilet waters and eau de cologne; perfumed oil-based roll-ons; reed diffusers; fragranced room sprays.

Class 4: Candles; fragranced candles; tea-lights.

2. The application was opposed by ARTDECO cosmetic GmbH ("the opponent") and is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act") against the goods in class 3 only.

3. The opponent relies on the following trade mark:

UK00902561413¹

ARTDECO

Filing date: 04 February 2002

Registration date: 21 December 2004

¹ On 1 January 2021 the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UKIPO created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark now recorded on the UK trade mark register has the same legal status as if it had been applied for and registered under UK law.

Relying on all goods for which it is registered as follows:

Class 3: Soaps, perfumery, essential oils, cosmetics, ladies' cosmetics, eyebrow cosmetics, eyebrow pencils, cosmetic preparations for baths, cosmetic skin creams, false eyelashes, false nails, nail varnish, lipsticks, beauty masks, cosmetic preparations for slimming purposes, make-up powder; men's cosmetics, in particular shaving lotions, shaving creams, skin creams; hair lotions, shampoos, hair dyes.

4. The opponent claims that the marks are highly similar and goods are identical/similar and this will give rise to a likelihood of confusion.

5. The applicant filed a counterstatement denying the claims made by the opponent and putting them to proof of use of their mark.

6. The applicant is represented by Groom Wilkes & Wright LLP and the opponent is represented by MW Trade Marks Limited. Both parties filed evidence and submissions. Neither party requested a hearing. This decision is therefore taken following careful consideration of the papers.

7. 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

8. The opponent provided their evidence in chief in the form of a witness statement from Stefan Neumeyer, the Chief Financial Officer of the opponent. This statement is dated 6 October 2025 and is accompanied by 7 exhibits. The main purpose of this evidence is to show use of the earlier mark.

9. The applicant's evidence is a witness statement from Puravee Shah, the Trade Mark Attorney acting for the applicant. The statement is dated 18 December 2025 and accompanied by 2 exhibits.

10. The opponent filed evidence in reply by way of a second witness statement from Mr Neumeyer, dated 23 February 2026 and accompanied by a further 21 exhibits.

Decision

11. Section 5(2)(b) is being relied upon and is as follows:

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

[...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

12. By virtue of its earlier filing date, the opponent's mark qualifies as an earlier mark, in accordance with section 6 of the Act. The earlier mark had been registered for more than five years before the priority date of the contested mark and is subject to the use requirements, per section 6A of the Act. The applicant requested that the opponent provides proof of use for the mark.

13. For reasons that will become apparent later in this decision, I do not consider that the issue of proof of use will be determinative in these proceedings, and I will conduct my assessment on the basis that the opponent can rely upon the full breadth of its specification.

Case law

14. 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 be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

15. I note that both parties have 'perfumery' in class 3 which is identical. Consequently, I will not undertake a full comparison of the goods and will proceed on the basis that the parties' specifications include some identical aspects. If the opposition fails even where the goods are identical, it will also fail where the goods are only similar, or where there is no similarity between the goods.

Average consumer and the purchasing act

16. 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.

17. In *Iconix Luxembourg Holdings SARL v Dream Pairs 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.

18. The average consumer for the relevant goods is the general public. The purchasing act will be primarily visual because such goods will be selected after

perusal of the goods in high-street stores or from photographs/images on Internet websites or in catalogues. That is not to say, though, that the aural aspect should be ignored since the goods may sometimes be the subject of discussions with sales representatives, for example. The goods at issue can range greatly in price, but would mostly be considered as a moderate price level. That said, various factors such as scent and/or suitability for skin type or purpose may be taken account of by the consumer when making the purchase. I find that a medium degree of attention is likely to be paid during the purchase for the relevant goods.

Comparison of the marks

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

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

20. 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.

21. The respective trade marks are shown as follows:

Contested mark	Earlier mark
ARDEO	ARTDECO

22. The earlier mark is a word mark comprising one word and the overall impression therefore lies in that word. The same applies to the contested mark.

23. Visually, both marks share the letters ‘A’, ‘R’, ‘D’, ‘E’, and ‘O’ presented in that order (although not consecutively in the earlier mark). The earlier mark further contains the letters ‘T’ and ‘C’ which have no counterpart in the contested mark. I note the comments from the opponent that the beginning and end of the marks are the same. I therefore find the marks visually similar to between a medium and a high degree.

24. Turning next to the aural comparison, I believe that a significant proportion of consumers will pronounce the contested mark as AR/DEE/OH. The opponent’s mark will be pronounced as ART/DEH/CO. Therefore, there is some similarity in the beginning and the very end of the marks but the middle differs and I find them to be aurally similar to a medium degree. In the event that consumers pronounce the contested mark as AR/DEH/OH then the marks are closer together aurally but still differ in the hard ‘T’ and ‘C’ sounds of the earlier mark. In that instance I find them aurally similar to between a medium and a high degree.

25. The opponent made no mention of the conceptual comparison in their pleadings. In their submissions, the applicant stated that the average consumer will understand ARTDECO to mean “a style of decoration that was especially popular in the 1920s/1930s and uses simple shapes and lines and strong colours”. I agree that the average consumer will understand the earlier mark to be referring to a historical style (although they might not know the full detail). They go on to say that the contested mark is “a Latin term which means, for example, to be on fire, glow, sparkle”.² For a

² Applicant written submissions dated 27 March 2026, paragraph 14

conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the General Court and the CJEU including *Ruiz Picasso v OHIM*³. I do not believe that the average UK consumer will immediately grasp the above meaning and will more likely see the mark as an invented term. In any event, regardless of whether the average consumer assigns the Latin meaning or sees the mark as invented, the marks are either dissimilar or not conceptually similar.

Distinctive Character of the Earlier Mark

26. 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).”

³ [2006] ECR I-643; [2006] E.T.M.R 29

27. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and/or services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it. I have been provided with evidence of use by the opponent which I can use to consider whether the distinctiveness has been enhanced.

28. In order to do this, first I must consider the level of inherent distinctiveness the earlier mark has. As discussed above, 'ARTDECO' is a dictionary term (although perhaps more commonly seen as two separate words) which refers to a popular historical style. Although it has no direct link to the goods, it could perhaps be seen as an indication of the style of the goods or the time the goods were invented or initially introduced. Therefore, I find the mark to be inherently distinctive to between a low and a medium degree.

29. It is the UK market that is relevant to an assessment of enhanced distinctiveness. The opponent has not provided me with any sales figures or details of their market within the UK. The sales figures provided are for EU (specifically excluding the UK and Germany), Germany, Spain, France and Italy. The list of retailers provided in the witness statement of Stefan Neumeyer does not contain any UK retailers and he states that the advertising/promotional material contained within the exhibits are from France, Germany, Greece, Italy, Poland and Portugal. The only mention of the UK within the evidence is one invoice contained in Exhibit D however, I note that whilst the purchasing company is based within the UK, the delivery country is noted as being Germany. Therefore, I find that the opponent has not shown enhanced distinctiveness in the UK market and so the distinctive character of the mark remains at its inherent level.

Likelihood of confusion

30. 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 and services 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. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services 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.

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

- I have found the earlier mark to be visually similar to between a medium and a high degree, aurally similar to between a medium and high degree for some consumers and a medium degree for other consumers.
- I have found the marks to be conceptually dissimilar or not conceptually similar.
- The contested mark is a word mark comprising a singular word and therefore, that is where the overall impression lies.
- The earlier mark is also a word mark comprising a singular word and therefore, that is where the overall impression lies.
- I consider that the average consumer is likely to be a member of the general public who will select the goods primarily by visual means, although I do not discount an aural component.
- I have concluded that a medium level of attention will be paid during the purchasing process.
- The earlier mark is inherently distinctive to between a low and medium degree.
- I have found at least some of the goods to be identical.

32. Whilst the levels of visual and aural similarities between the marks are relatively high, I note in *The Picasso Estate v OHIM*, Case C-361/04 P, the CJEU found that:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

Although I note the levels of visual and aural similarity between the marks, I consider that the clear difference in concepts between the marks, together with the low to medium degree of distinctiveness of the earlier mark will counteract those levels of similarity for consumers paying a medium degree of attention. I note that the opponent has commented that the identical beginnings of the marks would lead to a finding of confusion however, this is not always decisive. Even where the goods are identical, I consider that the differences between the marks will not go unnoticed by the average consumer. Taking all of the above into account, I find there to be no likelihood of direct confusion.

33. I will therefore turn to look at indirect confusion. I take guidance from Mr Purvis in *L.A. Sugar Limited* where he stated:

“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).⁴

34. These examples are not exhaustive but provide helpful focus as was confirmed by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207:

“This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.”⁴

The commonality between the marks lies in the letters A R D E and O which are not so highly distinctive that no one but the brand owner could use them as a trade mark. The addition of the letters “T” and “C” in the earlier mark creates a materially different word and concept and therefore I do not consider that the average consumer would perceive ARDEO as a sub-brand, variant or logical brand extension of ARTDECO. I can see no other reason why the average consumer would view the marks as coming from the same undertaking or indicating the same or related brands. The difference in concepts would prevent the average consumer from assuming they are from the same undertaking, it may be that the average consumer calls to mind the other mark upon seeing the shared letters however, this is mere association and not indirect confusion.⁵ Therefore, I find there to be no likelihood of indirect confusion.

⁴ Paragraph 12

⁵ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

Conclusion

35. The opposition fails in its entirety, subject to any successful appeal.

Costs

36. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. I award the applicant the sum of **£1250**, calculated as follows:

Considering the Notice of opposition and preparing the counterstatement	£300
Preparing evidence and considering and commenting on the other side's evidence	£600
Preparation of submissions in lieu	£350
Total	£1250

37. I therefore order ARTDECO cosmetic GmbH to pay Neal's Yard (Natural Remedies) Limited the sum of £1250. This 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 17th day of September 2026

L Nicholas
For the Registrar