

O/0842/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004100010

IN THE NAME OF STYLE MY WAY LTD

FOR THE TRADE MARK:

Lavendara

IN CLASS 3

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 451567 BY

LAVERANA GMBH & CO. KG

BACKGROUND AND PLEADINGS

1. On 14 September 2024, Style My Way Ltd (“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 27 September 2024, and protection is sought for the following goods:

Class 3 Beauty lotions; Beauty care cosmetics; Beauty serums; Beauty creams; Cosmetic products in the form of aerosols for skincare; Perfumery products; Beauty gels; Beauty milks; Cosmetic products for the shower; Beauty masks; Masks (Beauty -); Beauty soap; Beauty creams for body care; Beauty milk; Beauty balm creams; Cosmetic products in the form of aerosols for skin care; Beauty serums with anti-ageing properties; Skincare cosmetics; Natural cosmetics; Beauty preparations for the hair; Sets of cosmetic oral care products; Soap products; Skin care products for animals; Distilled oils for beauty care; Beauty care preparations; Cleansing products for the eyes; Facial beauty masks; Beauty tonics for application to the body; Cosmetics; Beauty tonics for application to the face; Essential oils for use in the manufacture of scented products; Beauty masks for hands; Body cleaning and beauty care preparations; Non-medicated beauty preparations; Natural makeup; Body care cosmetics; Natural perfumery; Hair cosmetics; Body and facial creams [cosmetics]; Skin care cosmetics; Colour cosmetics; Facial creams [cosmetics]; Colour cosmetics for the skin; Hair care creams [for cosmetic use]; Colour cosmetics for the eyes; Body creams [cosmetics]; Anti-aging moisturizers used as cosmetics; Natural oils for cosmetic purposes; Hair care lotions [for cosmetic use]; Cosmetics for eye-lashes; Cosmetics for suntanning; Organic cosmetics; Facial makeup; Eye cosmetics; Sun care lotions [for cosmetic use]; Decorative cosmetics; Skin masks [cosmetics].

2. On 23 December 2024, the application was opposed by Laverana GmbH & Co. KG (“the opponent”) based upon sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act

1994 (“the Act”). Under sections 5(2)(b) and 5(3), the opponent relies upon the following trade marks:

Laverana

UKTM no. 3417863

Filing date: 31 July 2019

Registration date: 25 October 2019

Priority date: 16 April 2019 (Turkey)

(“the First Earlier Mark”)

Laverana

UKTM no. 3703387

Filing date: 21 August 2019¹

Registration date: 20 May 2022

(“the Second Earlier Mark”)

Lavera

UKTM no. 904098679

Filing date: 29 October 2004

Registration date: 25 February 2008

(“the Third Earlier Mark”)

Lavera

UKTM no. 911493426

Filing date: 16 January 2013

Registration date: 29 November 2018

(“the Fourth Earlier Mark”)

The logo for Lavera Naturkosmetik. The word "lavera" is written in a stylized, lowercase, italicized font. Below it, the words "NATURKOSMETIK" are written in a smaller, uppercase, sans-serif font, separated by a thin horizontal line.

¹ This mark was filed pursuant to Article 59 of the Withdrawal Agreement between the UK and the EU. As such, the opponent can rely upon the EU filing date, which is the date recorded here.

UKTM no. 918187431

Filing date: 24 January 2020

Registration date: 29 May 2020

("the Fifth Earlier Mark")

(together "the earlier marks")

3. The goods relied upon under both grounds are set out in Annex 1 to this decision. Under section 5(2)(b), the opponent claims that the goods are identical or similar, and the marks are similar, with the result that there is a likelihood of confusion.

4. Under section 5(3), the opponent claims to have a reputation for the goods listed in Annex 1 and claims that use of the applicant's mark, without due cause, would take unfair advantage of, and/or be detrimental to, the distinctive character and/or repute of the earlier marks.

5. Under section 5(4)(a), the opponent relies upon the signs **LAVERA** and **LAVERANA**, which it claims to have used throughout the UK since 1989 in relation to:

"Cosmetics, skin care; deodorants; hair preparations and hair care products; beauty products and preparations; shampoos and conditioners; dentifrices; shower and body gels, washes and creams; perfumery; non-medicated creams, balms and lotions; hand creams and soaps; shaving preparations; lip balms, eye creams; foot bath preparations; make up; cosmetic oils; moisturisers; oils; essential oils."

The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

6. The applicant filed a counterstatement denying the grounds of opposition and requesting proof of use of the Third and Fourth Earlier Marks.

7. Neither party requested a hearing, and neither filed written submissions in lieu. This decision is taken following a careful consideration of the papers on file.

REPRESENTATION

8. The applicant is unrepresented.

9. The opponent is represented by Lincoln IP.

EVIDENCE AND SUBMISSIONS

10. The opponent filed evidence in chief in the form of the witness statement of Sarah Düing dated 20 May 2025, which is accompanied by 8 exhibits (SD1 to SD8). Ms Düing is Head of Legal for the opponent.

11. The applicant filed evidence in the form of the witness statement of Ayat Elsharkawi dated 15 July 2025. Ms Elsharkawi is the Director of the applicant.

12. The opponent filed written submissions in reply dated 4 September 2025.

RELEVANCE OF EU LAW

13. 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

Preliminary matters

14. In her evidence, Ms Elsharkawi states that the applicant's "branding, product design, and target audience [...] differ" from those of the opponent. Whilst the way in which the opponent's mark has been used is relevant insofar as it relates to genuine

use, reputation or goodwill, the assessment that I must undertake under sections 5(2) and 5(3) is based upon all the ways in which the applicant's mark could be used within the context of its applied-for specification. As such, the way in which the applicant is currently presenting (or planning to present) its brand and/or products, is not relevant to that assessment. Similarly, under section 5(4)(a), I must compare any sign that is distinctive of the opponent's goodwill with the applicant's mark as applied-for, without limitation to any particular marketing strategy being adopted. As such, this line of argument does not assist the applicant.

Section 5(2)(b)

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

“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.”

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

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

17. Given their earlier filing dates, the earlier marks qualify as earlier trade marks pursuant to section 6 of the Act. As they completed their registration processes more than 5 years prior to the filing date of the applicant's mark, the Third and Fourth Earlier

Marks are subject to the use provisions in section 6A of the Act. The First, Second and Fifth Earlier Marks are not and can, therefore, be relied upon for all of the goods identified by the opponent.

18. 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.

My Approach

19. In my view, the First and Second Earlier Marks represent the opponent's best case. This is because the length of the marks is more similar to the applicant's mark, meaning that they are more similar overall, both visually and aurally. Further, the goods and services covered by the specification of the Third, Fourth and Fifth Earlier Marks do not put the opponent in any stronger position. Consequently, I will begin my assessment focusing upon the First and Second Earlier Marks, returning to the other three earlier marks to the extent that I consider necessary. As such, I do not need to consider proof of use at this stage.

Comparison of goods

20. All of the goods relied upon by the opponent can be found in Annex 1 to this decision. However, I have included only those terms that I consider represent the opponent's best case in the table below. With that in mind, the competing goods are as follows:

Opponent's goods	Applicant's goods
<u>The First Earlier Mark</u> <u>Class 3</u> Non-medicated cosmetics, body and beauty care products, non-medicated dentifrices. <u>The Second Earlier Mark</u> <u>Class 3</u> Non-medicated cosmetics, body and beauty care products; perfumery; essential oils.	<u>Class 3</u> Beauty lotions; Beauty care cosmetics; Beauty serums; Beauty creams; Cosmetic products in the form of aerosols for skincare; Perfumery products; Beauty gels; Beauty milks; Cosmetic products for the shower; Beauty masks; Masks (Beauty -); Beauty soap; Beauty creams for body care; Beauty milk; Beauty balm creams; Cosmetic products in the form of aerosols for skin care; Beauty serums with anti-ageing properties; Skincare cosmetics; Natural cosmetics; Beauty preparations for the hair; Sets of cosmetic oral care products; Soap products; Skin care products for animals; Distilled oils for beauty care; Beauty care preparations; Cleansing products for the eyes; Facial beauty masks; Beauty tonics for application to the body; Cosmetics; Beauty tonics for application to the face; Essential oils for use in the manufacture of scented products; Beauty masks for hands; Body cleaning

	and beauty care preparations; Non-medicated beauty preparations; Natural makeup; Body care cosmetics; Natural perfumery; Hair cosmetics; Body and facial creams [cosmetics]; Skin care cosmetics; Colour cosmetics; Facial creams [cosmetics]; Colour cosmetics for the skin; Hair care creams [for cosmetic use]; Colour cosmetics for the eyes; Body creams [cosmetics]; Anti-aging moisturizers used as cosmetics; Natural oils for cosmetic purposes; Hair care lotions [for cosmetic use]; Cosmetics for eye-lashes; Cosmetics for suntanning; Organic cosmetics; Facial makeup; Eye cosmetics; Sun care lotions [for cosmetic use]; Decorative cosmetics; Skin masks [cosmetics].
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21. With regard to the term “*skin care products for animals*” in the applicant’s specification, I bear in mind that the specifications of both the First and Second Earlier Marks include the terms “*non-medicated cosmetics, body and beauty care products*”. Whilst this would cover skin care products, I do not consider that an ordinary reading of this term would be taken to include goods intended for use on anything other than the human body. Consequently, I consider it unlikely that these goods are identical. However, there will still be an overlap in nature, purpose and method of use. There will also be an overlap in user, as both will be purchased by members of the general public. However, I consider it unlikely that there will be any meaningful overlap in trade channels, nor do I have any evidence before me to suggest otherwise. There is no competition or complementarity. In my view, the goods are similar to a medium degree.

22. The terms “*perfumery products*” and “*natural perfumery*” in the applicant’s specification fall within the broader category of “*perfumery*” in the specification of the Second Earlier Mark. They are, therefore, identical on the principle outlined in *Meric*.

23. The term “*essential oils for use in the manufacture of scented products*” in the applicant’s specification falls within the broader category of “*essential oils*” in the specification of the Second Earlier Mark. Consequently, they are identical on the principle outlined in *Meric*.

24. All of the remaining terms in the applicant’s specification are either self-evidently identical or identical on the principle outlined in *Meric* to the term “*non-medicated cosmetics, body and beauty care products*” in the specifications of the First and Second Earlier Marks.

The average consumer and the nature of the purchasing act

25. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes 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 in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

26. In *Iconix*, 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.

27. The average consumer for the goods will be members of the general public and, in some circumstances, professional users (such as where goods are for use in the manufacturing process, or where goods are purchased by beauticians for use in their businesses). The average consumer is likely to consider factors such as scent, ingredients and effectiveness when purchasing the goods. They are likely to vary in cost, but will not be particularly expensive. In my view, the average consumer will generally pay a medium degree of attention during the purchasing process, although I recognise that a slightly higher level of attention may be paid by professional users.

28. The goods are likely to be self-selected from the shelves of a retail outlet or following perusal of images of the product on a website or in a catalogue. Consequently, visual considerations will dominate the purchasing process. However, I do not discount an aural component to the purchase given that advice may be sought from retail assistants.

Comparison of trade marks

29. It is clear from *Sabel* 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. 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.”

30. 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.

31. The competing trade marks are as follows:

The opponent's marks	The applicant's mark
Laverana (the First and Second Earlier Marks)	Lavendara

32. Both parties' marks consist of a single word. There is nothing else to contribute to the overall impressions, which lie in the words themselves.

33. Visually, the marks coincide in the presence of the letters LAVE- at the beginning of the marks. In this regard, it is well-established that the beginning of marks tend to make more of an impact than the ends.² The marks also coincide in the pattern A-A at the end of the marks. They differ in that the middle of the mark is RA in the First and Second Earlier Marks and ND in the applicant's mark. They also differ in that the penultimate letter is N in the First and Second Earlier Marks and R in the applicant's mark, although the lower-case versions of these letters share some visual similarities. I note that the applicant's mark is only one letter longer than the First and Second Earlier Marks. I also bear in mind that the most noticeable difference between them appears in the middle of the marks, which makes it less striking. In my view, the marks are visually highly similar.

34. Aurally, the First and Second Earlier Marks are most likely to be pronounced as LAV-ERR-AHN-AHH. The applicant's mark is most likely to be pronounced LAV-ENN-DAR-AHH. The first and last syllables will be pronounced identically. In my view, the marks are aurally similar to a medium degree.

35. Conceptually, the First and Second Earlier Marks will be viewed as an invented word with no clear meaning. In my view, there will be a significant proportion of average consumers who view the applicant's mark as also having no meaning. As such, the marks will be conceptually neutral for those consumers. However, there will also be a significant proportion of average consumers who, as the applicant suggests, recognise the similarity of the applicant's mark to the word LAVENDER and, in the context of these particular goods, understand it as alluding to the fact that the goods are scented with lavender in some way. In those circumstances, the marks share no conceptual similarity.

Distinctive character of the earlier marks

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

² *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

“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-2779, 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).”

37. 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, 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.

38. The First and Second Earlier Marks consist of the word LAVERANA. This is an invented word which has no clear meaning. In my view, it is inherently distinctive to a high degree.

39. Turning to the evidence of use filed by the opponent, I note that Ms Düing gives evidence that the opponent has used the First and Second Earlier Marks in the UK since 1989. Despite this, all of the evidence of use appears to relate to the LAVERA brand. Whilst there is some use of the word LAVERANA as part of a company name,

there does not appear to be any trade mark use in evidence. There is also no distinction between any sales or marketing figures provided to enable me to establish what proportion (if any) relate to goods sold under the First and Second Earlier Marks. As such, I am unable to conclude that the First and Second Earlier Marks benefit from any enhanced distinctiveness.

Likelihood of confusion

40. Confusion can be direct or indirect. Direct confusion is where the average consumer mistakes 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 them 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 goods may be offset by a greater degree of similarity between marks, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the First and Second Earlier Marks, 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.

41. I have found as follows:

- a. The goods vary from being identical to similar to a medium degree.
- b. The average consumer for the goods will include both members of the general public and professionals, who will pay a medium degree of attention (although it may be slightly higher for professional users).
- c. The purchasing process is predominantly visual, although I do not discount an aural component.

- d. The marks are visually highly similar and aurally similar to a medium degree. The marks are either conceptually neutral or share no conceptual similarities, depending upon how the applicant's mark is perceived.
- e. The First and Second Earlier Mark are inherently distinctive to a high degree.

42. I note that in her evidence, Ms Elsharkawi has referenced the fact that there has been no evidence of confusion filed by the opponent. However, I have no evidence before me to suggest that the applicant has actually been trading. As such, it is not surprising that there is no evidence of confusion, and I do not find this to be determinative regarding whether there is a likelihood of confusion.

43. In my view, given the predominantly visual nature of the purchasing process and the fact that the marks are visually highly similar, I find it likely that they will be mistakenly recalled or misremembered as each other. This is particularly the case given the highly distinctive nature of the First and Second Earlier Marks. I bear in mind that for a significant proportion of average consumers, there will be no conceptual similarity between the marks, because one will have a concept and one will not. However, that will only assist in distinguishing between them if they recognise the visual differences between the marks which, in my view, they will not. Further, for the significant proportion of average consumers who view the applicant's mark as an invented word with no meaning, the marks are conceptually neutral. A likelihood of confusion for this significant proportion of average consumers alone is sufficient to prevent registration of the applicant's mark. In my view, this finding will apply whether the goods are similar to a medium degree or identical, due to the impact of the interdependency principle. As such, there is a likelihood of direct confusion.

Final Remarks

44. I will deal with this ground insofar as it is based on the Third, Fourth and Fifth Earlier Marks briefly. For these purposes, I will proceed on the basis that the opponent has satisfied the genuine use requirements for the Third and Fourth Earlier Marks. In my view, these three marks are further removed from the applicant's mark than those already discussed. This is because the difference in length between the parties'

respective marks is quite noticeable. In my view, the marks are sufficiently different to avoid them being mistakenly recalled or misremembered as each other. Furthermore, I can see no basis for finding indirect confusion. As such, I would have found no likelihood of confusion in respect of the oppositions based upon the Third, Fourth and Fifth Earlier Marks.

Section 5(3)

45. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

46. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

47. The relevant case law can be found in the following judgments of the CJEU: *Case C-375/97, General Motors, Case 252/07, Intel, Case C-408/01, Adidas-Salomon, Case C-487/07, L’Oreal v Bellure, Case C-323/09, Marks and Spencer v Interflora and Case C383/12P, Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors, paragraph 24*.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29 and Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77 and Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs

particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact on the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

48. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier marks and the application are similar. Secondly, the opponent must show that the earlier marks had achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the earlier marks being brought to mind by the later marks. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

Similarity of the marks

49. For the reasons given above, I find the First and Second Earlier Marks to be similar to the applicant's mark. Further, given the common four letter beginning (LAVE-) shared by the Third, Fourth and Fifth Earlier Marks and the applicant's mark, I also accept that there is at least some similarity between them.

Reputation

50. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

51. As noted above, Ms Düing gives unchallenged narrative evidence that the earlier marks have been used in the UK since 1989, which clearly amounts to longstanding use. There is evidence of advertising in publications with readership of up to 161,500 which are taken from extracts of a 2019 marketing report. The same report also includes evidence of sponsorship of the 2019 Natural Health & Beauty Awards and social media promotions.³ There is evidence that sales for Q3 of 2018 were in excess of £268,000, and sales for Q3 of 2019 were in excess of £250,000. There is similar evidence provided for 2020, although I note that the sales were higher for Q1 of that

³ Exhibit SD1

year.⁴ This is supported by invoice evidence, although I note that sales are all to a single business customer and Amazon.⁵ However, this is likely to be reflective of onward sales to the end consumer. The total sales for 2018 are given as in excess of £1 million, and sales for 2019 are given as in excess of £976,000.⁶ There is evidence of the opponent entering the LAVERA branded products into award competitions, although it is not clear what success was achieved (if any) or how widely publicised this was.⁷ I note that there is evidence of press coverage from 2023, including in *Good Housekeeping*, which it is said has a readership of over 1 million.

52. Whilst the sales figures are clearly not insignificant, I am not convinced that they represent a particularly strong market share given what is undoubtedly an enormous market in the UK and I have been provided with no market share figures. In my view, the high point of the evidence is the press coverage in *Good Housekeeping* (which is a widely read publication) and the fact that sales have been made through Amazon, which is likely to result in a wide geographical spread of use. However, the other advertising appears to be in publications of a much smaller scale, and there is no evidence to suggest that the awards sponsored or entered into by the opponent were widely publicised amongst average consumers. On balance, I am not convinced that the opponent has established that it had a reputation at the relevant date.

53. Even if I am wrong in that finding, the only marks in which the opponent can have a reputation are the Third, Fourth and Fifth Earlier Marks. This is because, as I explained above, there is no evidence of the First and Second Earlier Marks in use, other than as the name of a company. In my view, even if the opponent did benefit from a modest reputation in the Third, Fourth and Fifth Earlier Marks (which, in my view, is the best possible case on the evidence), the differences between the marks would be sufficient to offset that reputation, even when used on identical goods. As such, the opposition based upon this ground fails.

⁴ Exhibit SD2

⁵ Exhibit SD4 and SD6

⁶ Exhibit SD3

⁷ Exhibit SD3

Section 5(4)(a)

54. 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,

aa)...

b) ...

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.”

55. 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.”

56. I can deal with this ground relatively swiftly. The opponent plainly has a reasonably successful business and has, therefore, generated a protectable goodwill. However, I do not consider that the sign LAVERANA is distinctive of that goodwill. This is because, as explained above, there is almost no use of that sign in evidence and the use that is shown relates only to the name of a company. With regard to the LAVERA sign, it is plainly distinctive of the opponent’s goodwill. However, the distance between that sign and the applied-for mark is, in my view, sufficient to avoid misrepresentation, even where there is an identical field of activity. Consequently, I dismiss the opposition based upon this ground.

CONCLUSION

57. The opposition is successful and, subject to appeal, the application is refused.

COSTS

58. The opponent has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. I bear in mind that the opponent has paid the higher official fee of £200 due to its reliance upon sections 5(3) and 5(4)(a). However, neither of those grounds have succeeded. As such, I will only make an award in respect of the lower official fee of £100. With that in mind, I award the opponent the sum of **£1,600**, calculated as follows:

Preparing a Notice of opposition and considering the counterstatement	£350
Preparing evidence and considering the applicant's evidence	£800
Written submissions	£350
Official fee	£100
Total	£1,600

59. I therefore order Style My Way Ltd to pay Laverana GmbH & Co. KG the sum of **£1,600**. This sum is to 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

S WILSON

For the Registrar

ANNEX 1

The First and Fifth Earlier Mark

Class 3

Non-medicated cosmetics, body and beauty care products, non-medicated dentifrices.

The Second Earlier Mark

Class 3

Non-medicated cosmetics, body and beauty care products; non-medicated dentifrices; Non-medicated skin care preparations; beauty preparations, namely, cosmetics; non-medicated milks, tonics, lotions, creams, emulsions, and gels for the face and body; non-medicated cleansing preparations for the face and body; skin astringents for cosmetic purposes; body mist; non-medicated foot soaks, depilatory creams; pumice stones for personal use; soaps; bubble bath; shower creams and gels; non-medicated skin care preparations, namely, skin exfoliating products; make-up removing preparations for the face; talcum powder; shampoos; hair lotions, oils, conditioners and repair preparations; hair dyes; hair spray, gel and mousse; hair brighteners; hair mascaras; shaving creams and gels; after-shave gels and lotions; perfumery; deodorants for personal use; essential oils; bath beads; bath oils and salts; cosmetics; skin masks; foundation cream; blush; bronzing powder; make up powder; facial shimmer preparations; mascara; eyeliners; cosmetic eye and lip pencils; eye shadows; lip balms; lip gloss; lipsticks; makeup removing preparations; nail polish; nail forms; false nails; nail polish remover; cuticle creams; preparations for strengthening nails; non-medicated concealer sticks; body glitter; sun-tanning lotions and creams for the face and body; fake tan lotions and creams for the face and body; sunscreen creams; after sun lotions and creams for the face and body; Perfumes, eaux de toilette; bath and shower gels and salts not for medical purposes; toilet soaps; cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; cosmetics, namely, sun-tanning milks, gels and oils and after-sun preparations; make-up preparations; shampoos, gels, mousses, balms and preparations in aerosol form for hairdressing and hair care; hair lacquers; hair-coloring and hair-decolorizing preparations; preparations for waving and setting hair; cosmetics, decorative

cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturizing creams, make-up, foundation, face powder and rouge; blemish stick, lip pencils, eyeliner pens and mascara, eye shadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants for skin; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; non-medicated body care products, namely, creams, lotions and polish; shower gels; hair care products, namely, shampoos, hair lotions, conditioning rinses, conditioners, combined shampoo and conditioner, hair sprays, styling mousse and gels; baby and infant care products, namely, baby creams, baby shampoos, and baby toothpaste; bath oils; skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men, namely, shaving cream, after-shave balms; products for oral hygiene, not for medical purposes, namely, toothpaste; preparations for the mouth and for cleaning the mouth, breath-freshening and mouth-freshening preparations, namely, mouth sprays, mouth rinses, dentifrices, and toothpaste; antiperspirants.

The Third Earlier Mark

Class 3

Perfumery goods; essential oils; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturising creams, make-up, foundation, face powder and rouge; blemish stick, lipstick, lip pencils, eyeliner pens and mascara, eyeshadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; body care products, shower gels, hair care products; shampoos and hair lotions, conditioning rinses (conditioners), combined shampoo and conditioner, hair sprays, styling mousse and gels; hair dyes; baby and infant care products; bath oils, shampoos, skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men; shaving cream, after-shave balms; deodorants; products for oral hygiene (not for medical purposes); preparations for the mouth and for cleaning the mouth, breath-freshening and mouth-freshening preparations, mouth sprays, mouth rinses, dentifrices; toothpaste; antiperspirants.

The Fourth Earlier Mark

Class 3

Body and skin care and beauty preparations (not for medical purposes); milks, tonics, lotions, creams, emulsions, gels for the face and body; non-medicated cleansing preparations for the face and body; skin astringents not for medical purposes; body mist; non-medicated foot baths, depilatory creams; pumice stones for personal use; soaps; bubble bath; shower creams and gels; skin exfoliating products; make-up removing preparations for the face; talcum powder; shampoos; hair lotions, oils, conditioners and repair preparations; hair dyes; hair spray, gel and mousse; hair brighteners; hair mascaras; shaving creams and gels; after-shave gels and lotions; perfumery; deodorants for personal use; essential oils; bath beads; bath oils and salts; cosmetics; masks; foundation cream; blush; bronzing powder; make up powder; facial shimmer preparations; mascara; eyeliners; cosmetic eye and lip pencils; eye shadows; lip balms; lip gloss; lipsticks; makeup removing preparations; nail polish; nail forms; false nails; nail polish remover; cuticle creams; preparations for strengthening nails; non-medicated concealer sticks; body glitter; sun-tanning lotions and creams for the face and body; fake tan lotions and creams for the face and body; sunscreen creams; after sun lotions and creams for the face and body; Perfumes, eaux de toilette; bath and shower gels and salts not for medical purposes; toilet soaps; cosmetics, in particular creams, milks, lotions, gels and powders for the face, body and hands; sun-tanning milks, gels and oils and after-sun preparations (cosmetics); make-up preparations; shampoos; gels, mousses, balms and preparations in aerosol form for hairdressing and haircare; hair lacquers; hair-colouring and hair-decolorizing preparations; preparations for waving and setting hair; cosmetics, decorative cosmetics; face creams and lotions; skin-cleansing lotions and creams, hand and body lotions and creams; tinted moisturising creams, make-up, foundation, face powder and rouge; blemish stick, lip pencils, eyeliner pens and mascara, eyeshadow; sun care preparations; foot-care preparations; foot creams and lotions; exfoliants; abrasive implements in the form of pumice stones; non-medicated powders and lotions for foot spas; body care products, shower gels, hair care products; shampoos and hair lotions, conditioning rinses (conditioners), combined shampoo and conditioner, hair sprays, styling mousse and gels; hair dyes; baby and infant care products; bath oils, shampoos, skin oils and creams; anti-wrinkle creams; massage oils; grooming products for men; shaving cream, after-shave balms products for oral hygiene (not for medical purposes); preparations for the mouth and for cleaning the mouth, breath-

freshening and mouth-freshening preparations, mouth sprays, mouth rinses, dentifrices; toothpaste; antiperspirants.