

O/0865/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004202306

IN THE NAME OF

KAIZEN REGULATORY CONSULTANCY

TO REGISTER THE FOLLOWING TRADE MARK:

Kaizen Regulatory Consultancy

IN CLASSES 35 AND 45

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP600003780

BY KAIZEN REPORTING LIMITED

Background and pleadings

1. On 12 May 2025, Kaizen Regulatory Consultancy (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 06 June 2025 in respect of the following services:

Class 35: Business consultancy relating to regulatory affairs for pharmaceutical related companies

Class 45: Legal consultancy relating to regulatory affairs for pharmaceutical related companies.

2. On 04 September 2025, Kaizen Reporting Limited (“the Opponent”) opposed the application under the fast-track opposition scheme. The opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is only directed at the class 35 services listed above. The Opponent relies upon the following trade mark:



UK Registration no. UK00003309232

Filing date: 05 May 2018

Date of registration: 24 August 2018

Relying upon the following services only:

Class 35: Business consultancy; financial transaction reporting all of the aforementioned services relating to the execution of financial transactions in financial instruments, securities, shares, commodities, derivatives, options, and/or futures.

3. The Opponent submits that the Applicant’s mark is visually and phonetically similar to its registered trade mark as both marks include the word “Kaizen”. Additionally, it argues that the concept behind the marks is likely to be the same.

Furthermore, the Opponent contends that there is an overlap between the services, and, as consequence, there exists a likelihood of confusion.

4. The Applicant filed a counterstatement denying all claims made by the Opponent. It states that their marks are not identical and that the goods/services are not identical or similar either.
5. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
6. The net effect of the above is to require parties to seek leave in order to file evidence in fast-track oppositions. This would apply to evidence, which is filed later in the proceedings, and therefore would not include evidence of use which is required to be filed alongside the notice of opposition (Form TM7F). The Opponent filed evidence within its Form TM7F.
7. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate costs; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.
8. Neither party is represented in these proceedings.

Relevance of EU law

9. 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 and submissions

10. As noted above, the Opponent filed evidence of use within its Form TM7F. This included financial turnover figures, details regarding marketing and promotional expenditure, and seven exhibits.
11. Only the Opponent chose to file written submissions in lieu of a hearing, dated 06 June 2026.
12. I have taken the evidence and submissions into account in reaching this decision and will refer to them below where necessary. This decision is taken following a careful perusal of the papers.

Decision

13. The registration procedure for the earlier mark was completed more than five years prior to the filing date of the contested applications. Therefore, it is subject to proof of use pursuant to section 6A of the Act. Accordingly, I will begin by assessing whether there has been genuine use of the earlier mark in relation to the registered services relied upon. The relevant period for this purpose is the five-year period ending with the date of the application in issue, namely 13 May 2020 to 12 May 2025.

Proof of use

14. The relevant statutory provisions are set out in Section 6A of the Act, which states:

“(1) This section applies where -

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of

whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)- (5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

15. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

16. Consequently, the onus is upon the Opponent to prove that genuine use of the earlier mark was made within the relevant territory in the relevant period, and in respect of the relevant services as registered.

17. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kameradschaft 'Feldmarschall*

Radetsky [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of

the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus, there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

18. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the services at issue in the relevant territory during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:
- i) The scale and frequency of the use shown.
 - ii) The nature of the use shown.
 - iii) The services for which use has been shown.
 - iv) The nature of those services and the market(s) for them.
 - v) The geographical extent of the use shown.
19. As indicated in the case law cited above, use does not always need to be quantitatively significant to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded as “warranted in the economic sector concerned to maintain or create a share in the market for the services protected by the mark”.

Form of the mark

20. Before I move on to assess if the Opponent has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. As outlined in *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22, the use of the mark in a different form may also constitute use of the mark as registered.
21. As well as use of the mark as registered, the evidence also shows use of the word “Kaizen” in standard font. In my view, the dominant and distinctive element of the registered mark is the word “Kaizen”, with the stylisation making only a small contribution, that does not alter the distinctive character. I therefore find this to be an acceptable variant on which the Opponent can rely.

Assessment of the evidence of use

22. The Opponent claims to have used its mark in relation to the following services:

Class 35: Business consultancy; financial transaction reporting all of the aforementioned services relating to the execution of financial transactions in financial instruments, securities, shares, commodities, derivatives, options, and/ or futures.

23. I note the following from the Opponent's evidence:

- **Exhibit 1** – A representation of the Opponents mark
- **Exhibit 2** – Extract from the Opponent's brochure
- **Exhibit 3** – Extract from the Opponent's "about us" page on its website. The information gives a brief background about the Opponent's business, as well as stating that the business was started in 2013.
- **Exhibit 4** – Screenshots of Google, Yahoo, and Bing search results showing the Opponent as the first results.
- **Exhibit 5** – Extracts of the Opponent's website indicating the benefits and features of its services. An example of a successful "case study" where a global asset management firm utilised the Opponent's services. The first screenshot has "© 2024 Kaizen Regtech Group Limited. All rights reserved" at the bottom which demonstrates use within the relevant period.
- **Exhibit 6** – Screenshots from a "highlights" video relating to the Opponent's flagship RegTalk Conference, an annual event put on by the Opponent for the regulatory reporting community. The event took place on 10 June 2025 which is just outside of the relevant period, however,

as the exhibit refers to an annual event, it suggests that the Opponent has held similar events in the past.

- **Exhibit 7** – Screenshots from Opponent’s sales pitch deck, including information about a number of the Directors of the Opponent and their experience and specialisms. Includes a screenshot of a flow diagram showing how the Opponent will provide its services to clients.

24. The Opponent has also provided the following turnover figures within the TM7F form for the relevant period, beginning with the Financial Year 2020 through to the Financial Year 2024:

Financial year	Turnover (GBP)
FY24	15,269,398
FY23	13,340,310
FY22	12,061,049
FY21	9,249,866
FY20	5,434,352

25. Whilst I appreciate that the Opponent’s mark is also registered for goods and services beyond those identified at paragraph 21, the Opponent has stated that the mark has been used in relation to the relevant services and that the turnover figures provided relate to those services. This is supported by the signed Statement of Truth accompanying the TM7F. Furthermore, the Applicant has not challenged those figures. In those circumstances, I consider the turnover figures to be substantial, particularly as they demonstrate consistent year-on-year growth. When viewed in the context of limited services relied upon by the Opponent, I find the figures to be significant.
26. Additionally, the Opponent also included annual figures relating to its advertising and marketing spend on promoting the mark in the UK as shown below:

Period	Annual Spend (GBP)
12 May 2020 to 11 May 2021	88,581.28
12 May 2021 to 11 May 2022	132,832.78
12 May 2022 to 11 May 2023	176,496.20
12 May 2023 to 11 May 2024	206,141.33
12 May 2024 to 11 May 2025	217,695.02
Total	821,746.61

27. These figures are likewise taken to represent the Opponent's annual expenditure on advertising and marketing in respect of the services for which use has been claimed. As with the turnover figures, they demonstrate a substantial investment in promoting the mark. The evidence also shows that advertising and marketing expenditure increased steadily year on year throughout the relevant period.
28. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.¹
29. As indicated in the case law cited above, use does not need to be quantitatively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded as "warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark".
30. Taking the evidence as a whole, I am satisfied that the Opponent has demonstrated genuine use of its mark in relation to the services relied upon. The exhibits provide a range of examples showing the mark in use, including extracts from the Opponent's brochure and website, search engine results, promotional materials, case studies, conference-related content, and sales presentation documents. Whilst the exhibits are not as detailed as might ideally be expected and contain limited information regarding the extent of their circulation, reach, or frequency of use, they nevertheless provide evidence of

¹ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

the mark being used in the course of trade in connection with the relevant services.

31. Importantly, the documentary evidence does not stand in isolation. The Opponent has also provided substantial turnover figures and significant advertising and marketing expenditure relating to the relevant services, both of which show consistent year-on-year growth throughout the relevant period. Those figures are supported by a signed Statement of Truth and have not been challenged by the Applicant. When the exhibits are considered alongside this financial evidence, they show sustained commercial activity under the mark.
32. Accordingly, notwithstanding the limited detail contained within certain exhibits, I find that the evidence, viewed as a whole, is sufficient to establish genuine use of the Opponent's mark in relation to the services relied upon.

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

33. The opposition is based upon section 5(2)(b) of the Act which reads 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”

34. 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 services

35. Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the “Nice Classification” means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1979.”

36. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

37. The relevant factors identified by Jacob J. (as he then was) in *British Sugar Plc v James Robertson & Sons Limited* (“*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.

38. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (“GC”) stated that:

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

39. The services to be compared are:

Opponent’s services	Applicant’s services
Class 35: Business consultancy; financial transaction reporting all of the aforementioned services relating to the execution of financial transactions in financial instruments, securities, shares, commodities, derivatives, options, and/or futures.	Class 35: Business consultancy relating to regulatory affairs for pharmaceutical related companies.

Business consultancy relating to regulatory affairs for pharmaceutical related companies

40. The Opponent submits that the Applicant’s specification falls wholly within the broader category “business consultancy” contained within its specification and therefore the respective services are similar due to their shared nature, purpose and consultancy function.

41. The Applicant, on the other hand, submits that the parties operate in fundamentally different sectors and provide distinct services. It states that its business is limited to pharmaceutical regulatory affairs consultancy, including

regulatory compliance advice, dealings with medicines regulators, and support concerning pharmaceutical regulatory frameworks. By contrast, the Opponent's services are said to relate exclusively to the financial services sector, focusing on regulatory reporting, data quality tools, transaction reporting, and RegTech solutions for financial markets, instruments, derivatives, commodities, and securities. The Applicant argues that the Opponent's own evidence, including Exhibits 1 to 7 and the TM7F, confirms that the Opponent's activities are confined to financial sector reporting services and are therefore unrelated to the Applicant's pharmaceutical regulatory consultancy services.

42. It has come to the Tribunal's attention that the Opponent's specification contains an error arising from an amendment made in 2018. The file history shows that the Opponent sought to amend its Class 35 specification to read:

“Business management; business consultancy; business reports; business statistical information and metrics; business information services and appraisals; business and marketing research; computerised file management; financial transaction reporting; all of the aforementioned services relating to the execution of financial transactions in financial instruments, securities, shares, commodities, derivatives, options, and/or futures; all of the aforementioned services also being provided via global computer networks.”

43. However, it appears that the semi-colon following the term “financial transaction reporting” was inadvertently omitted. As a consequence, the limitation, as currently recorded, arguably applies only to the term “financial transaction reporting”, rather than to all of the preceding services, including “business consultancy”.
44. Nevertheless, I will assess the similarity of the parties' services on both bases, namely on the assumption that the limitation applies to the Opponent's business consultancy services and on the assumption that it does not.

45. I consider the Opponent's term "Business consultancy" broad enough to cover the Applicant's services listed above. It is my view that the Applicant's term would be included in the more general category contained within the Opponent's specification. The above services of the Applicant are still "business consultancy services", albeit limited to the area of regulatory affairs for pharmaceutical related companies. Therefore, bearing in mind the principle of *Meric*, the respective services are considered identical.
46. For completeness, I will also consider the Opponent's broader consultancy services subject to the limitation "all of the aforementioned services relating to the execution of financial transactions in financial instruments, securities, shares, commodities, derivatives, options, and/or futures".
47. The parties' services share the same broad nature as specialist business consultancy services and are aimed at business customers. They may also be offered through similar trade channels, such as consultancy and advisory firms, and may be selected by overlapping decision-makers within businesses.
48. However, the services differ in their specific purpose and subject matter. The Opponent's services concern the execution of financial transactions and require expertise in financial markets and investment activities. By contrast, the Applicant's services relate to regulatory affairs within the pharmaceutical sector and require specialist knowledge of pharmaceutical compliance and regulatory frameworks.
49. While both services fall within the broad field of business consultancy, they are neither competitive nor complementary.
50. Taking all factors into account, I find that the shared consultancy nature of the services, as well as the overlap in users and trade channels creates some similarity between them. I therefore find the services to be similar to a low degree.

51. Whilst I note the Applicant's submissions regarding the services that are actually provided by both parties, it is well established that the comparison of goods and services must be conducted on the basis of the specifications relied upon by the parties, rather than by reference to their actual trading activities. The fact that the Opponent may currently provide a narrower range of services than those covered by its specification is therefore irrelevant to the assessment.

The average consumer and the nature of the purchasing act

52. 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 (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).
53. 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 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.

54. The Applicant submits that its customers are different to those of the Opponent, stating that it provides services to pharmaceutical companies, biotech firms, clinical research organisations, medical regulatory bodies, and pharmaceutical compliance teams, whereas the Opponent's customers are banks, investment firms, financial market intermediaries, trading institutions, and financial reporting departments. As such, the Applicant states that the customers operate in different industries, with different regulatory frameworks and are highly sophisticated professionals who exercise care and diligence in selecting advisors.
55. I have no specific submissions from the Opponent on the identity of the average consumer, however it states that while the level of attention paid by consumers is a relevant factor, it is only one aspect of assessment of the likelihood of confusion. Further, the Opponent contends that even where consumers exercise a relatively high degree of care, confusion may arise where similar marks are used for identical or similar services.
56. The average consumer of the services at issue is a business or other professional organisation seeking services to aid or improve the efficient running of their business, as well as looking for advice relating to financial reporting and pharmaceutical regulatory affairs. The nature of the services

means that they are likely to be infrequently purchased by consumers, and the cost of the services in question is likely to vary. The average consumer will take various factors into consideration such as the cost, the reputational standing of the provider and the suitability of the services for their specific needs. In my view, I agree with the Applicant that the consumer of the relevant services will do so with a relatively high degree of care and attention.

57. The average consumer will choose a service provider after perusing websites or printed promotional literature. They may also see advertisements online, or in printed publications, and seek out reviews. They may also receive word-of-mouth recommendations from professional advisers and other contacts. I find that both visual and aural aspects of a mark will be relevant, although the visual element is likely to be more significant.

Comparison of trade marks

58. It is clear from *Sabel BV 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. The CJEU stated at paragraph 34 of its judgement 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”.

59. 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 trade marks and to give due weight to any other features which are not

negligible and therefore contribute to the overall impressions created by the trade marks.

60. The trade marks to be compared are as follows:

The Opponent's mark	The Applicant's mark
	Kaizen Regulatory Consultancy

61. The Opponent submits that both marks are dominated by the element “Kaizen”, which constitutes the entirety of its earlier mark and the first and most distinctive element of the Applicant’s mark. The Opponent contends that consumers generally pay greater attention to the beginning of a mark and, as a result, the marks are visually and aurally similar.

62. The Opponent further submits that the marks are conceptually similar because both convey the idea of “Kaizen”, which they say is a recognised Japanese business concept meaning continuous improvement. It notes that the Applicant itself acknowledged this meaning in its Counterstatement. According to the Opponent, the additional words “Regulatory Consultancy” are descriptive of the Applicant’s services and do not materially alter the overall impression created by the mark. Consequently, the Opponent argues that the Applicant’s mark remains closely connected to, and similar to, its earlier “KAIZEN” mark.

63. The Applicant submits that the parties’ marks are materially different. It notes that the Opponent’s mark consists solely of the word “KAIZEN” presented as a logo, whereas its own mark comprises the three-word expression “Kaizen

Regulatory Consultancy”. The Applicant argues that the additional words create a distinct overall impression by immediately indicating a business providing regulatory consultancy services. It further contends that “Regulatory Consultancy” is a dominant component of the mark, distinguishing it from the Opponent’s single-word mark and signalling a different commercial origin and field of activity.

Overall Impression

64. The Opponent’s mark consists of the word “KAIZEN” presented in a minimally stylised typeface. The bottom right of the letter “K” and the bottom left of the letter “A” are joined by what I will describe as a blue tick. Despite this limited stylisation, the dominant impression of the Opponent’s mark remains the word “KAIZEN”.
65. The Applicant’s mark consists of three words, namely, “Kaizen Regulatory Consultancy”. There are no other elements in the mark to contribute to its overall impression, which lies in the words themselves. However, it is considered that the words “Regulatory Consultancy” are entirely descriptive of the services concerned and thus makes a lesser contribution than the distinctive element “Kaizen”.

Visual Comparison

66. The Opponent’s mark consists solely of the six-letter word “KAIZEN”, whereas the Applicant’s mark comprises the words “Kaizen Regulatory Consultancy”. Accordingly, the marks coincide in the word “KAIZEN”, which appears at the beginning of the Applicant’s mark, but differ to the extent that the Applicant’s mark contains the additional words “Regulatory Consultancy”, while the Opponent’s mark includes a modest degree of stylisation. Taking these points into account and bearing in mind the respective overall impressions of the marks, I consider them to be visually similar to a medium degree.

Aural Comparison

67. Aurally, the Opponent's mark will be articulated as "KIGH-ZEN", as would the first word in the Applicant's mark. For some consumers, the descriptive nature of the words "Regulatory Consultancy" (which will be pronounced in the usual way) in the Applicant's mark will mean that they will not articulate them. In this case, both marks are aurally identical. However, I do not discount that some consumers may articulate these words which would result in the marks being aurally similar to a medium degree.

Conceptual Comparison

68. Conceptually, while I note the parties' submissions that the word "Kaizen" refers to a business philosophy of continuous improvement, no evidence has been provided to show that the average consumer would recognise or attribute that meaning to the term. Although some consumers may understand the word in this way, and therefore perceive a shared conceptual reference, I consider it more likely that a significant proportion of the relevant public will view "Kaizen" either as an invented term or as a foreign-language word with no readily identifiable meaning. For those consumers, the marks will be conceptually neutral. The words "Regulatory Consultancy" in the Applicant's mark introduce a point of conceptual difference; however, those words are wholly descriptive of the services concerned and possess little, if any, distinctive character. Accordingly, while the marks differ conceptually to the extent that the Applicant's mark contains these descriptive elements, that difference is of limited significance.

Distinctive character of the earlier trade marks

69. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public –

Rewe Zentral AG v OHIM (LITE) [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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).”

70. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The Opponent has not made any specific submissions regarding enhanced distinctiveness; however, it has filed evidence to demonstrate genuine use of its mark. Therefore, I will firstly consider the inherent distinctiveness of the Opponent’s mark before considering whether the

evidence also establishes that the mark has acquired an enhanced degree of distinctiveness through use.

71. The Applicant made the following submission regarding the distinctiveness of the word “Kaizen”:

“Kaizen’ is a dictionary word describing a general business concept meaning “continuous improvement”. It is widely used across many industries as a generic business term, not a distinctive proprietary indicator. The presence of a shared dictionary term does not create confusion where the remainder of each mark is highly distinctive.

72. The Opponent makes no specific submissions regarding the distinctiveness of its mark but maintains that “KAIZEN” is distinctive. However, as stated above the Opponent agrees with the Applicant that “KAIZEN” is a well-known Japanese business concept meaning “continuous improvement”.

73. The Opponent’s mark consists of the word “KAIZEN” presented in a minimal stylised form. Whilst I have noted the parties’ submissions concerning the meaning of that word, there is no evidence before me to suggest that the average consumer would necessarily be familiar with it. I also acknowledge the parties’ contention that “KAIZEN” is a dictionary-defined term; however, even if that is so, it is not a word that is commonly used or readily understood by the average consumer. In the absence of evidence to the contrary, I consider it more likely that the relevant consumer would perceive “KAIZEN” either as an invented word or as a foreign-language term with no immediately apparent meaning in relation to the services at issue. Consequently, I find that the Opponent’s mark possesses a high degree of inherent distinctive character.

74. I will now consider whether the Opponent’s evidence demonstrates that its sign benefits from an enhanced distinctive character. Above I have found the Opponent’s evidence sufficient to prove genuine use of its mark, however, whilst genuine use and enhanced distinctive character are interrelated, they are two distinct concepts. Whilst I found the Opponent’s evidence sufficient to show

genuine use, I remind myself that the bar for proving enhanced distinctiveness is considerably higher. This is because it requires a level of knowledge of the mark amongst average consumers leading to the mark having a greater capacity to identify the goods/services as coming from a particular undertaking, not simply that there has been an attempt to create or maintain a market for goods under the mark. Again, as stated previously, the Opponent's evidence is lacking in certain areas, such as there being limited evidence of advertising materials, and a lack of information regarding the market share held by the Opponent, as well as no information relating to the geographical spread of the mark, for example. Consequently, whilst I note that the Opponent has existed since 2013, I am not persuaded that it has sufficiently demonstrated how strongly its mark is associated with the services to support a conclusion that its inherent distinctiveness has been enhanced through use.

Likelihood of confusion

75. 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.
76. 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 factors are interdependent, and, for instance, 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.

77. Throughout the course of this decision, I have determined that:

- The services range from being similar to a low degree to *Meric* identical depending on how the limitation applies to them.
- The average consumer of the respective services will be the professional business and organisations. The purchasing process is mainly visual but aural considerations may play a part. The level of attention paid during the purchasing process is relatively high.
- The marks are visually similar to a medium degree and aurally similar to at least a medium degree, or identical where the descriptive elements of the Applicant's mark are not articulated. Conceptually, the marks differ to the extent that the Applicant's mark contains the words "Regulatory Consultancy", which convey a clear descriptive meaning. However, as those words are non-distinctive, their impact on the conceptual comparison is limited. By contrast, I consider the shared element "KAIZEN" to be conceptually neutral, as it is likely to be perceived by the average consumer either as an invented term or as a foreign-language word with no readily understood meaning. Consequently, whilst there is some conceptual differentiation arising from the descriptive wording in the Applicant's mark, the common element itself does not contribute any meaningful conceptual content to the comparison.
- The level of inherent distinctive character of the Opponent's mark is considered high.

78. I am mindful not to dissect the competing marks artificially and recognise that the average consumer generally perceives trade marks as wholes. Nevertheless, the respective marks share the same dominant and distinctive element, "KAIZEN". The differences between them are limited to the descriptive wording "Regulatory Consultancy" in the Applicant's mark and the minimal stylisation present in the Opponent's mark. "KAIZEN" is the sole verbal element

of the Opponent's mark and appears at the beginning of the Applicant's mark, a position which typically has greater impact on consumers' perception.²

79. While I consider visual considerations to be particularly important in the selection of the services at issue, I also acknowledge the role of aural perception. As noted above, some consumers may articulate only the "KAIZEN" element of the Applicant's mark, rendering the marks aurally identical. I have also borne in mind the principle of interdependency, whereby a lesser degree of similarity between the services may be offset by a greater degree of similarity between the marks. Consequently, even where the parties' services share only a low degree of similarity, the degree of similarity between the marks is such that it is sufficient to give rise to a likelihood of confusion. Even where the services are purchased with a higher degree of attention, I find there to be a likelihood of direct confusion. The descriptive nature of the additional wording and the negligible stylisation do little to distinguish the marks. As a result, consumers are likely to retain an imperfect recollection of the marks and, consequently, mistake one for the other.
80. However, if I am wrong in my assessment I will also consider the likelihood of indirect confusion occurring. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is

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

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).”

81. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal in *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*.³ I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.

³ *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

82. Whilst I accept that the categories identified by Mr Iain Purvis Q.C. (as he then was) are not exhaustive, I nevertheless consider them to provide a useful and accurate illustration of the circumstances in which findings of indirect confusion will commonly arise. The marks at issue share the common element “KAIZEN”, which I have found to be inherently distinctive to a high degree and therefore the shared use of this word would not be considered as coincidental use but would instead point to the same origin. Further it is my view that the Applicant’s mark may be seen as a sub-brand dedicated to “Regulatory Consultancy”. I therefore find a likelihood of indirect confusion.

Conclusion

83. The opposition under Section 5(2)(b) of the Act has succeeded. Subject to any successful appeal, the application will be refused for the opposed services only. The application will proceed to registration for the unopposed services in class 45.

Costs

84. As the Opponent has been successful, it is entitled to a contribution towards its costs. Tribunal Practice Notice (TPN) 1/2023 states that:

“[...] unrepresented parties will be sent a proforma at the end of proceedings inviting them to set out the number of hours spent on the various steps of the proceedings. [...] The sum to be awarded per hour will be analogous to that set out in the Civil Procedure Rules, Part 46, which is currently £19 per hour.”

85. In its costs pro forma dated 6 June 2026, the Opponent claimed 4 hours for preparing the notice of opposition, which included the filing of its evidence of use, 45 minutes for considering the Applicant’s counterstatement, and 1 hour 30 minutes for preparing written submissions. I consider each of these time claims to be reasonable in the circumstances of the case. Applying the claimed hourly rate of £19 results in a total of **£118.75** (6 hours 15 minutes at £19 per

hour). In addition, the Opponent incurred the official opposition filing fee of £100. I therefore award the Opponent the sum of **£218.75** as a contribution towards its costs.

86. I therefore order **Kaizen Regulatory Consultancy** to pay **Kaizen Reporting Limited** the sum of **£218.75**. 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 24th day of September 2026

Oliver Rose'Meyer
For the Registrar