

O/0880/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NUMBER UK00004080127
BY DONGGUAN RUIQIAO TRADING CO., LTD.
TO REGISTER THE FOLLOWING TRADE MARK:**



Lumos Modesty

IN CLASS 25

AND

**AN OPPOSITION THERETO UNDER NUMBER 451924
BY WARNER BROS. ENTERTAINMENT INC.**

BACKGROUND AND PLEADINGS

1. On 26 July 2024, Dongguan Ruiqiao Trading Co., Ltd. (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK (“the contested mark”). The application was accepted and published for opposition purposes on 11 October 2024 in respect of the following goods:

Class 25: Clothing; Footwear; Caps being headwear; Hosiery; Gloves [clothing]; Shawls; Scarfs; Veils [clothing]; Swimsuits; Belts [clothing].

2. On 13 January 2025, Warner Bros. Entertainment Inc. (“the Opponent”) opposed the application in full based upon sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

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

UK trade mark number 3829153

Representation: LUMOS

Filing date: 13 September 2022

Registration date: 9 December 2022

Goods relied upon:

Class 25: Clothing, footwear, and headgear for men, women and children – namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, plastic bibs, skirts, blouses, dresses, suspenders, sweaters, hoodies, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sunvisors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, socks, booties, slippers socks; swimwear; masquerade and Halloween costumes; paper hats.

4. Given its respective filing and registration dates, the Opponent’s mark qualifies as an earlier mark under section 6(1)(a) of the Act but was not, at the filing date of the contested mark, subject to the use provisions at section 6A of the Act. For the purposes of these proceedings, the Opponent may rely upon its earlier mark for the goods listed in the previous paragraph without proving use.

5. Under section 5(2)(b), the Opponent claims that there is a likelihood of confusion (including a likelihood of association) between its earlier mark and the contested mark, on the basis that the marks are highly similar and the respective goods are either identical or highly similar.

6. Under section 5(4)(a), the Opponent relies upon the unregistered sign “LUMOS”, which it claims to have used throughout the UK since 2001 in relation to *entertainment, motion picture films, pre-recorded DVDs and other pre-recorded media, accompanying merchandise*. The Opponent claims to have generated goodwill in the sign and that use of the contested mark would constitute a misrepresentation to the public that would damage the Opponent’s goodwill. Therefore, use of the contested mark would be contrary to the law of passing off.

7. The Applicant filed a counterstatement denying the grounds of opposition and putting the Opponent to proof of its claimed goodwill.

8. The Opponent is represented by Wiggin LLP and the Applicant by Pablo Albert Catala.

9. Only the Opponent filed evidence in these proceedings. The parties neither requested a hearing nor filed written submissions in lieu of a hearing. This decision is therefore made following a careful consideration of the papers.

EVIDENCE AND SUBMISSIONS

10. The Opponent filed evidence in the form of the witness statement of Robert White dated 10 July 2025 and its corresponding two exhibits (RW1-RW2). Robert White is a senior trade mark attorney employed by the Opponent’s representative. The Opponent’s evidence has been filed to demonstrate the definition of the word “modesty” and that such word is a derivative of “modest”, which renders this part of the contested mark descriptive and non-distinctive for the goods in the application. Written submissions were filed alongside the evidence. I will refer to the evidence and submissions if and when it becomes necessary to do so later in this decision.

PRELIMINARY POINT

11. In its written submissions filed during the evidence rounds, the Opponent withdrew its section 5(4)(a) ground of opposition and filed no evidence going thereto. Accordingly, the 5(4)(a) ground is dismissed, and this opposition will proceed solely on the basis of the section 5(2)(b) ground.

DECISION

Relevance of EU law

12. 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.

Section 5(2)(b)

Statutory provisions

13. Section 5(2)(b) of the Act states:

“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.”

Relevant case law

14. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may

retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Comparison of goods

15. It is settled case law that I must make my comparison of the goods on the basis of all relevant factors. These include the nature of the goods, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281. As the General Court (“GC”) said in *Boston Scientific Ltd v OHIM*,¹ goods are complementary when:

¹ Case T-325/06.

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

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

17. The parties goods are listed in the table below.

The Opponent's goods	The Applicant's goods
Class 25: <i>Clothing, footwear, and headgear for men, women and children – namely, shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, plastic bibs, skirts, blouses, dresses, suspenders, sweaters, hoodies, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sunvisors, belts, scarves, sleepwear, pajamas, lingerie, underwear, boots, shoes, sneakers, sandals, socks, booties, slippers socks; swimwear; masquerade and Halloween costumes; paper hats.</i>	Class 25: <i>Clothing; Footwear; Caps being headwear; Hosiery; Gloves [clothing]; Shawls; Scarfs; Veils [clothing]; Swimsuits; Belts [clothing].</i>

18. By virtue of the word ‘namely’ in the Opponent’s specification, its goods are limited to those listed after that word. As such, the Opponent cannot rely on the preceding terms ‘clothing’, ‘footwear’ and ‘headgear’ at large.

19. In its counterstatement, the Applicant submits that “the marks coexist in different commercial contexts: the opponent operates primarily in the entertainment industry [...], while the applicant’s goods are fashion and clothing items”. This is not a relevant consideration for assessing the similarity between the goods under section 5(2)(b); the assessment is a notional one based on how the parties’ terms appear in their respective specifications.² It is the wording of those specifications that I will consider, rather than the context in which the parties sell their goods.

20. All of the clothing goods listed in the Opponent’s specification fall within the Applicant’s broad term *clothing*. These goods are identical in line with *Meric*.

21. The Opponent’s *boots*, *shoes*, *sneakers* and *sandals*³ are types of footwear and therefore fall within the Applicant’s *footwear* term. These goods are identical in line with *Meric*.

22. The Applicant’s *caps being headwear* are identical to the Opponent’s *caps*.

23. The Applicant’s *hosiery* refers to garments designed to cover the legs and feet, such as stockings and tights. I find *hosiery* highly similar to the Opponent’s *lingerie*, *underwear* and *socks*. They are all types of undergarments usually worn underneath other items of clothing or footwear and have the same purpose of covering the body, albeit different parts of the body; their method of use also overlaps. They will all be found in the same location in retail stores and under the same or similar categories online. However, they are neither in competition with each other nor complementary.

² *Present-Service Ullrich GmbH & Co KG v OHIM* (T-66/11) [2013] E.T.M.R. 29., paragraph [45].

³ I group terms together in accordance with *Separode Trade Mark*, BL O/399/10.

24. The Applicant's *gloves [clothing]* are highly similar to the Opponent's *scarves* on the basis that they are both types of clothing accessories usually worn for additional warmth in colder weather. They are worn on different parts of the body though still overlap in their purpose and method of use. Whilst the shape of the goods differs, they tend to be made using the same fabrics and so there is an overlap in their nature. They will be found in the same location in retail stores and under the same or similar categories online. Although consumers will expect the same undertaking to provide *gloves* and *scarves*, and they are often purchased and worn together, they are not complementary in the sense described by the case law, neither are they in competition with one another.

25. The Applicant's *shawls* are highly similar to the Opponent's *scarves*. A shawl is usually a larger piece of fabric than a scarf and is worn around the shoulders and upper body as opposed to predominantly the neck. However, the majority of the remaining factors are shared: the physical nature is almost identical, as is the method of use and purpose. The users will be the same and the goods will be found in very close proximity in stores and online. The goods also have a competitive relationship with consumers choosing a slightly different product for warmth or layering. However, they are not complementary.

26. The Applicant's *scarfs* and the Opponent's *scarves* are identical.

27. The Applicant's *veils [clothing]* are similar to the Opponent's *scarves*. They are both clothing accessories with a similar physical nature, though the fabrics used may differ. The purpose and method of use overlaps to the extent that they are both used for covering the upper part of the body, though veils are mainly used for covering the head, neck and shoulders whereas scarves are usually worn solely around the neck. Veils often have a cultural or religious purpose whereas the use of scarves is predominantly for warmth. Given their different uses, they will be found in clothing accessory sections of retail stores and online, but not side by side. The goods are not in competition, neither are they complementary. Overall, I find them similar to a medium degree.

28. The Applicant's *swimsuits* are identical to the Opponent's *swimwear*.

29. The Applicant's *belts [clothing]* are identical to the Opponent's *belts*.

30. That concludes my assessment of the similarity between the goods. The parties goods are either similar to a medium or high degree, or identical.

The average consumer and the purchasing act

31. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

32. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* 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.

33. The average consumer of the goods at issue will be a member of the general public. Various factors will be taken into account during the purchasing process such as aesthetics, durability and material. The goods will vary in price, but none are likely to be particularly expensive and all will be purchased reasonably frequently. Taking all of this into consideration, I find it likely that a medium degree of attention will be paid during the purchase.

34. The goods are likely to be self-selected from the shelves of a retail outlet or their online or catalogue equivalents. Visual considerations are, therefore, likely to dominate the selection process. However, given that advice may be sought from retail assistants and orders may be placed via the telephone, I do not discount an aural component to the purchase.

Comparison of marks

35. It is clear from *Sabel BV v Puma AG*, Case C-251/95 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 Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*, Case C-591/12P, 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 relevant 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.”

36. 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 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 marks.

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

The earlier mark	The contested mark
LUMOS	

Overall impression

38. The earlier mark comprises the one word “LUMOS” in word-only format. The overall impression resides in that one word.

39. The contested mark comprises a figurative device and text. The largest element is the figurative device, roughly resembling the shape of a triangle albeit highly stylised and consisting of numerous lines, a diamond shape at the top, and greyscale shading. The Opponent describes the device as a combination of the letters 'L' and 'M', though I do not consider this will be immediately obvious to the average consumer. Regardless, it has no counterpart in the earlier mark and so whether the letters are noticed, or not, has no bearing on the comparison of the parties' marks. Below the device are the words "Lumos Modesty" in a fairly standard typeface in black. The device is visually dominant given its size, but the text is how consumers will refer to the mark: both elements contribute equally to the overall impression of the mark.

40. I note the Opponent's submission that the distinctive and dominant component of the contested mark is the word "Lumos", and its evidence going to the link between the word "Modesty" and the clothing goods in the Applicant's specification. I accept that "modesty" in relation to clothing has a meaning: clothing worn to minimise skin exposure and to cover the body in a way that conceals rather than reveals it. However, it is not descriptive of clothing, it merely alludes to the intention of the user when wearing the clothing, or the manner in which they wear it. I do not consider the word "Modesty" in the Applicant's mark to be lacking distinctiveness to the extent that it alters the weight to which it contributes to the overall impression.

Visual comparison

41. The marks share the word "LUMOS", which is the only word in the earlier mark and the first word in the contested mark. This creates some visual similarity. However, the contested mark contains the additional word "Modesty", which renders the marks noticeably different in length. The contested mark also contains the large figurative device which creates a further visual difference. Bearing in mind that consumers usually tend to focus on the beginning of marks,⁴ which is where the similarity lies, I find the marks visually similar to between a low and medium degree.

⁴ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

Aural comparison

42. The common element, “LUMOS”, will be pronounced as two syllables, identically in each mark. The word “Modesty” in the contested mark will be pronounced in the ordinary way, as three syllables; the device will not be articulated. Again, bearing in mind that the similarity lies at the beginning of the marks, I find them to be aurally similar to a medium degree.

Conceptual comparison

43. The Applicant submits that “LUMOS” is a Latin-derived word meaning ‘light’, whereas the Opponent claims this will not be known by the average consumer, who will instead attribute this word with no meaning.

44. The Opponent submits that “Modesty” is descriptive for the goods at issue thus the conceptual comparison is between the word “LUMOS” in both marks. The Applicant’s position is that “Modesty” serves as a key concept and that its presence in the contested mark fundamentally changes the overall impression of the mark.

45. No evidence has been filed to demonstrate the Latin meaning of “LUMOS”, neither has evidence been filed to show that “LUMOS” will bring to mind the Harry Potter franchise.⁵ The average consumer in the UK will attribute no particular meaning to the word “LUMOS” and will likely perceive it as an invented word. The word “Modesty” is not descriptive and will not be ignored by the average consumer when confronted with the contested mark: its presence creates a conceptual difference between the marks. I find there to be no conceptual similarity between the marks, even bearing in mind the identical “LUMOS” element as it lacks any clear meaning.

Distinctive character of the earlier mark

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

⁵ Referenced by the Applicant in its counterstatement.

“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).”

47. 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 distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

48. There is no evidence of use of the earlier mark and so I have only the inherent position to consider. As I have discussed earlier in this decision, the word “LUMOS” has no clear meaning for the average consumer. It will be seen as an invented word having no allusive or descriptive nature for the goods. I therefore find it to be inherently distinctive to a high degree.

Likelihood of confusion

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

50. I have found the contested mark and the earlier mark to be visually similar to between a low and medium degree, aurally similar to a medium degree and to have no conceptual similarity. I have found the goods to be either identical or similar to either a medium or high degree. I have found the earlier mark to have a high degree of inherent distinctive character. I have identified the average consumer as a member of the general public, who will pay a medium degree of attention to a predominantly visual purchase (though I do not discount an aural aspect).

51. Before assessing the likelihood of confusion, I will briefly address one of the submissions made by the Applicant in its counterstatement: “[t]he opponent has not demonstrated sufficient reputation in the clothing sector under the LUMOS mark that would justify a finding of likelihood of confusion in Class 25”. The likelihood of confusion is considered based on a notional assessment of the various factors I have decided throughout the course of this decision, with no requirement for the Opponent to demonstrate a reputation in its earlier mark. I will say no more about this line of argument.

52. I will discuss direct confusion first. On the basis of the additional word “Modesty” and the large figurative device in the contested mark, both of which play an equal role to “Lumos” in the overall impression of the mark, I consider there to be no likelihood of direct confusion. This is because the aforementioned elements create visual differences which will not go unnoticed by the average consumer. Even considering the interdependency principle, this finding applies to all the goods, including those which are identical.

53. Turning to indirect confusion, I remind myself of the comments of Iain Purvis KC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*⁶

“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 recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite

⁶ BL O/375/10.

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).”

54. The examples given by Mr Purvis are not exhaustive. Rather, they were intended to be illustrative of the general approach.⁷ In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor KC, sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

55. Notwithstanding that the common element, “LUMOS”, has no meaning and the marks therefore have no conceptual similarity, bearing in mind the high distinctiveness of this word in relation to the goods, I find its role in the contested mark will lead the consumer to conclude that the marks originate from a shared or related undertaking. Whilst “Modesty” is not descriptive, and plays an equal role in the overall impression of the contested mark, my earlier finding that the word has a meaning in relation to class 25 goods, i.e. clothing worn to minimise skin exposure, means it is likely that consumers will see it as indicative of a particular product line of the LUMOS brand. The addition of the figurative device is stylistic and is consistent with a mark variation

⁷ See *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17 at [81] to [82].

or a rebranding from the same undertaking. I therefore find a likelihood of indirect confusion for all the goods at issue.

CONCLUSION

56. The Opponent's claim under section 5(2)(b) succeeds in its entirety and the contested mark is, subject to appeal, refused registration.

COSTS

57. The Opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. I award the following:

Preparing a statement and considering the counterstatement:	£250
Preparing evidence:	£600
Official fee:	£100 ⁸
Total:	£950

58. I therefore order Dongguan Ruiqiao Trading Co., Ltd. to pay Warner Bros. Entertainment Inc. the sum of £950. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 28th day of September 2026

Mrs E Fisher

For the Registrar

⁸ The official fee paid by the Opponent was £200, though I have reduced this to reflect the Opponent having withdrawn its 5(4)(a) ground during the evidence rounds.