

O/0896/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4148056
IN THE NAME OF MEAMO LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 453938
BY MEDSPA S.R.L.

Background and pleadings

1. Meamo Ltd (“the applicant”) applied to register the trade mark shown on the front cover of this decision (“the applicant’s mark”) in the UK on 15 January 2025 under number 4148056. It was accepted and published in the Trade Marks Journal on 31 January 2025 in respect of the following services:

Class 35: Online retail store services relating to clothing; Online retail store services relating to cosmetic and beauty products; Online marketing; Online retail services relating to jewelry; Online retail services relating to clothing; Online retail services relating to toys; Retail store services in the field of clothing; Provision of an online marketplace for buyers and sellers of goods and services.

2. On 30 April 2025, MEDSPA S.R.L. (“the opponent”) opposed the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at all the services. The opponent relies upon its UK trade mark **MIAMO COSMETICS** (“the opponent’s mark”) number 3702336. The opponent’s mark was filed on 28 September 2021, with an EU priority date of 23 August 2018, and became registered on 11 March 2022. It stands registered for the for the goods and services as shown in the table at paragraph 17, all of which are relied upon for opposition purposes.

3. As the priority date of the opponent’s mark is earlier than the filing date of the applicant’s mark, the opponent’s mark constitutes an earlier mark in accordance with section 6 of the Act. However, as it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. As a consequence, the opponent may rely upon all of the goods and services identified without having to establish genuine use.

4. In its statement of grounds, the opponent argues that the competing marks are similar, and that the parties’ goods and services are similar. On this basis, the opponent submits that there is a likelihood of confusion, including a likelihood of association.

5. The applicant filed a counterstatement denying the ground of opposition.

6. The opponent is professionally represented by Walker Morris LLP, whereas the applicant is not represented. Neither party filed evidence or requested a hearing, but both parties filed submissions in lieu. This decision is taken following careful consideration of all the papers before me. I have not summarised the submissions in full, but they will be referenced within this decision to the extent that is necessary.

Preliminary issue: fair and notional use

7. In its counterstatement, the applicant states “The Applicant has seen no evidence of any genuine operation by the Opponent in respect of the goods/services claimed”.¹ However, as a matter of law, I must clarify that the applicant’s comments relating to the opponent’s use or operation can have no bearing on the outcome of this opposition. As previously explained, the mark relied upon by the opponent had not been registered for five years at the date on which the application was filed. Consequently, the opponent is not required to prove use in the UK for any of the goods and services for which its mark is registered. The opponent’s mark is entitled to protection against a likelihood of confusion with the applicant’s mark based on its ‘notional’ use for all the goods and services listed in the register. The concept of notional use was explained by Laddie J in *Compass Publishing BV v Compass Logistics Ltd*² like this:

“22. [...] It must be borne in mind that the provisions in the legislation relating to infringement are not simply reflective of what is happening in the market. It is possible to register a mark which is not being used. Infringement in such a case must involve considering notional use of the registered mark. In such a case there can be no confusion in practice, yet it is possible for there to be a finding of infringement. Similarly, even when the proprietor of a registered mark uses it, he may well not use it throughout the whole width of the registration or he may use it on a scale which is very small compared with the sector of trade in which the mark is registered and the alleged infringer's use may be very limited also. In the former situation, the court must consider notional use extended to the full width of the classification of goods or services. In the latter

¹ Counterstatement, page 8

² [2004] RPC 41

it must consider notional use on a scale where direct competition between the proprietor and the alleged infringer could take place.”

8. So far as the applicant’s comments in relation to the opponent’s use of its goods and services is concerned, as per the Court of Justice of the European Union (“CJEU”) judgement in *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*,³ (particularly paragraph 66), it is necessary to consider all the circumstances in which the opponent’s mark might be used. As a result, even though the applicant has suggested that it has seen no evidence of “genuine operation” of the goods and services, my assessment must take into account only the opponent’s mark and any potential conflict with the applicant’s mark, regardless of its purported current use or operation.

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 2018⁴ 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)

10. Section 5(2)(b) of the Act 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.”

³ Case C-533/06

⁴ As amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023

11. Section 5A states: [...] “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.”

12. 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*:⁵

- (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

⁵ [2025] UKSC 25

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;
- (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 and services

13. In *Canon*,⁶ the CJEU stated, at paragraph 23 of its judgment, that when considering whether goods and services are similar, all the relevant factors relating to the goods and services should be taken into account. The CJEU stated that those factors include their nature, intended purpose, method of use and whether they are in competition with each other or are complementary.

14. The relevant factors identified by Jacob J. (as he then was) in *Treat*⁷ for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;

⁶ Case C-39/97

⁷ [1996] R.P.C. 281

- (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.

15. In *Kurt Hesse v OHIM*,⁸ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods and services. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*,⁹ the General Court (“GC”) stated that “complementary” means:

“...there is a 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 OHIM*,¹⁰ the GC confirmed that even if goods and services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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

⁸ Case C-50/15 P

⁹ Case T-325/06

¹⁰ Case T- 133/05

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

17. The goods and services to be compared are as follows:

The opponent's goods and services	The applicant's services
<i><u>Class 3:</u> Cologne; Toilet water; Perfume water; Hair balm; Flower perfumes (Bases for -); Massage candles for cosmetic purposes; Wax (Depilatory -); Moustache wax; Make-up powder; Mouthwashes, not for medical purposes; Hair dye; Cosmetics; Cosmetics for animals; Cosmetics for children; Cosmetics for eye-lashes; Eyebrow cosmetics; Cosmetic creams; Skin whitening creams; Dentifrices; Deodorants for pets; Deodorants for human beings or for animals; Vaginal washes for personal sanitary or deodorant purposes; Cleansers for intimate personal hygiene purposes, non medicated; Ethereal essences; Herbal extracts for cosmetic purposes; Extracts of flowers [perfumes]; Massage gels, other than for medical purposes; Dental bleaching gels; Hair spray; Almond milk for cosmetic purposes; Cleansing milk for toilet purposes; After-shave preparations; Hair lotion; Lotions for cosmetic purposes; Lip gloss; Mascara; Cosmetic masks; Eyebrow pencils; Cosmetic pencils; Cosmetic kits; Oils for toilet purposes; Cotton wool for cosmetic purposes; Pomades for cosmetic purposes; Potpourris [fragrances]; Tanning preparations; Baths (Cosmetic preparations for -); Aloe vera preparations for cosmetic purposes; Collagen preparations for cosmetic purposes; Douching preparations for personal sanitary or deodorant purposes [toiletries];</i>	<i><u>Class 35:</u> Online retail store services relating to clothing; Online retail store services relating to cosmetic and beauty products; Online marketing; Online retail services relating to jewelry; Online retail services relating to clothing; Online retail services relating to toys; Retail store services in the field of clothing; Provision of an online marketplace for buyers and sellers of goods and services.</i>

Phytocosmetic preparations; Bath preparations, not for medical purposes; Toiletries; Eye-washes, not for medical purposes; Hair straightening preparations; Hair-waving preparations; Sunscreen preparations; Cosmetic preparations for slimming purposes; Skincare cosmetics; Depilatory preparations; Perfumery; Antiperspirants [toiletries]; Make-up preparations; Nail care preparations; Shaving preparations; Make-up removing preparations; Perfume; Air fragrancing preparations; Lipstick; Bath salts, not for medical purposes; Bar soap; Soaps; Shampoo; Nail polish; Talcum powder, for toilet use; Dyes (Cosmetic -); Beard dyes; Tissues impregnated with cosmetic lotions; Make-up.

Class 5: Tanning pills; Sea water for medicinal bathing; Goulard water; Mineral waters for medical purposes; Thermal water; Nutritional supplements; Dietetic foods adapted for medical use; Infant formula; Amino acids for medical purposes; Anaesthetics; Antioxidant pills; Dressings, medical; Balms for medical purposes; Dietetic beverages adapted for medical purposes; Tranquillizers; Medicated massage candles; Medicated candy; Adhesive plasters; Vitamin supplement patches; Collagen for medical purposes; Collyrium; Compresses; Decoctions for pharmaceutical purposes; Medicated dentifrices; Deodorants, other than for human beings or for animals; Air deodorising preparations; Depuratives; Digestives for pharmaceutical purposes; Elixirs [pharmaceutical preparations]; Enzymes for medical purposes; Medicinal herbs; Balsamic preparations for medical purposes; Mud (Medicinal -); Mud for baths; Milk

ferments for pharmaceutical purposes; Ferments for pharmaceutical purposes; Immunostimulants; Medicinal infusions; Dietary supplements with a cosmetic effect; Mineral food supplements; Vaginal washes for medical purposes; Medicated after-shave lotions; Medicated hair lotions; Lotions for pharmaceutical purposes; Eyepatches for medical purposes; Medicines for human purposes; Medicinal oils; Hormones for medical purposes; Royal jelly for pharmaceutical purposes; Lozenges for pharmaceutical purposes; Slimming pills; Pomades for medical purposes; Chemical preparations for pharmaceutical purposes; Chemical preparations for medical purposes; Trace elements (Preparations of -) for human and animal use; Enzyme preparations for medical purposes; Phytotherapy preparations for medical purposes; Vitamin preparations; Pharmaceutical preparations; Acne treatment preparations; Bath (Therapeutic preparations for the -); Sunburn ointments; Pharmaceuticals; Pharmaceutical preparations for skin care; Mouthwashes for medical purposes; Tonics [medicines]; Anti-bacterial soap; Disinfectant soap; Syrups for pharmaceutical purposes; Medicated shampoos; Dietetic substances adapted for medical use; Suppositories; Medicinal tea; Herbal teas for medicinal purposes; Tissues impregnated with pharmaceutical lotions; Food supplements; Food supplements; Vitamin supplements.

Class 35: Business management relating to franchising; Business advice and consultancy relating to franchising; Business advisory services relating to the establishment and operation of franchises;

<i>Advertising; Organisation of trade fairs for commercial or advertising purposes; Organisation and conducting of exhibitions and trade fairs for commercial or advertising purposes; Management, planning and organisation of shows and trade fairs for commercial and advertising purposes; Compilation of information into computer databases; Retail and wholesale services, including online or via downloadable applications and new technologies, in relation to eau de Cologne, toilet water, scented water, hair conditioners, bases for flower perfumes, massage candles for cosmetic purposes, depilatory wax, moustache wax, make-up powder, mouthwashes, not for medical purposes, hair dyes, cosmetics, cosmetics for animals, cosmetics for children, cosmetic preparations for eyelashes, eyebrow cosmetics, cosmetic creams, Skin whitening creams, Tooth pastes, deodorants for pets, deodorants for human beings or for animals, Vaginal washes for personal sanitary or deodorant purposes, Cleansers for intimate personal hygiene purposes, non medicated, Ethereal essences, herbal extracts for cosmetic purposes, Extracts of flowers (perfumes), massage gels (other than for medical purposes) dental bleaching gels, hair spray, almond milk for cosmetic purposes, cleansing milk for toilet purposes, after-shave lotions, hair lotions, lotions for cosmetic purposes, lip glosses, mascara, beauty masks, eyebrow pencils, cosmetic pencils, cosmetic kits, oils for toilet purposes, cotton wool for cosmetic purposes, pomades for cosmetic purposes, potpourris (fragrances), sun-tanning preparations (cosmetics), Baths (cosmetic preparations for -), Aloe vera</i>	
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<i>preparations for cosmetic purposes, collagen preparations for cosmetic purposes, Douching preparations for personal sanitary or deodorant purposes (toiletries), Phytocosmetic preparations, Bath preparations (not for medical purposes), Toiletry preparations, Eye-washes (not for medical purposes), Hair stretching preparations, Waving preparations, Sunscreen preparations, Slimming purposes (cosmetic preparations for -), skincare cosmetics, Depilatory preparations, Perfume, anti-perspirants, Make-up products, Nail care preparations, Shaving balms, make-up removing preparations, Perfumes, air fragrancing preparations, Lipsticks, Bath salts (not for medical purposes), Cakes of soap, soaps, shampoos, nail glitter, Talcum powder for toilet use, Cosmetic dyes, beard dyes, Tissues impregnated with cosmetic lotion, Make-up, tanning pills, Sea water for medicinal bathing, Goulard water, mineral water for medical purposes, Thermal water, Nutritional supplements, Dietetic foodstuffs adapted for medical use, Baby food, Amino acids for medical purposes, anaesthetics, Antioxidant pills, medical dressings, Balms for medical purposes, Dietetic beverages adapted for medical, Tranquilisers, Medicated massage candles, Medicated candy, adhesive plasters, Vitamin supplement patches, Collagen for medical purposes, Eye drops, compresses, Decoctions for pharmaceutical purposes, Medicated dentifrices, Deodorants, other than for human beings or for animals, air fresheners, Depuratives, Digestives for pharmaceutical purposes, Elixirs (pharmaceutical preparations), Enzymes for medical purposes, medicinal herbs, balsamic preparations for medical</i>	
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purposes, Medicinal mud, bath muds, Milk ferments for pharmaceutical purposes, Ferments for pharmaceutical purposes, Immunostimulants, Medicinal infusions, dietary supplements with a cosmetic effect, Mineral nutritional supplements, Vaginal washes for medical purposes, Medicated after-shave lotions, Medicated hair lotions, lotions for pharmaceutical purposes, Eyepatches for medical purposes, Medicines for human purposes, Medicinal oils, Hormones for medical purposes, Royal jelly (for medical purposes), lozenges for pharmaceutical purposes, slimming pills, Pomades for medical purposes, chemical preparations for pharmaceutical purposes, Chemical preparations for medical purposes, Preparations of trace elements of human and animal use, Enzyme preparations for medical purposes, Phytotherapeutic preparations for medical purposes, Vitamin preparations, Pharmaceutical preparations, Acne treatment preparations, Therapeutic preparations for the bath, Sunburn ointments, Pharmaceutical preparations, Pharmaceutical preparations for skin care, mouth washes for medical purposes, Tonics (medicines), anti-bacterial soap, Disinfectant soap, Syrups for pharmaceutical purposes, Medicated shampoos, Dietetic substances adapted for medical use, suppositories, medicinal tea, Herbal teas for medicinal purposes, Tissues impregnated with pharmaceutical lotions, Nutritional supplements, dietary supplements, Vitamin supplements.

Class 44: *Chiropractics; Plastic surgery; Advisory services relating to health; Physical therapy; Massage; Health centers; Aromatherapy services;*

<i>Health spa services; Turkish baths; Medical clinic services; Manicuring; Alternative medicine services; Beauty salons; Hair salon services; Solarium services; Medical services; Medical services; Therapy services; Pharmacy advice; Consultation services relating to skin care; Cosmetic analysis for determining the most suitable cosmetics based on individual face shape and skin tone; Hygienic and beauty care; Consultancy in the cosmetic sector; Cosmetic treatment for the body; Beauty treatment services for the face and body.</i>	
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18. In its submissions in lieu, the opponent submits that the parties' goods and services are identical or similar. This is on the basis that they "share the same users or similar purpose, i.e. cosmetics and sale of cosmetics are similar". It also argues that, in relation to its sale of cosmetic items, "the similar services i.e. the sale of jewellery, toys and clothing products both online and in retail stores would be available via the same trade channels i.e. in department stores and as such, the services... are similar".¹¹ In its counterstatement, the applicant argues that the services are different and makes several submissions in relation to the different services. I will refer to these submissions below as required. It also submits that "if any overlap is found, the Applicant contends that any similarity is at most low".¹²

19. For the purposes of comparing goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.¹³ I have therefore assessed the applicant's services by dividing the terms into groups as per below.

Class 35:

Online retail store services relating to cosmetic and beauty products.

¹¹ Opponent's submissions, pages 12-13

¹² Counterstatement, page 7

¹³ *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38

20. In its submissions in lieu, the opponent submits that “the mark of the Opponent also covers the sale of cosmetic items which are identical services to those of the Applicant”. The applicant has argued that “the Applicant operates as an online retail platform distinct from manufacturing/branding of cosmetics”. Whilst this refers to the opponent’s class 3 goods, it has not commented on or acknowledged the opponent’s *retail and wholesale services, including online [...], in relation to [...] cosmetics*.

21. I agree with the opponent, as it is my view that the applicant’s services fall within the opponent’s *retail and wholesale services, including online [...], in relation to [...] cosmetics*. The parties’ services are therefore identical under the principle set out in *Meric*.

Online marketing.

22. The opponent does not offer a specific comparison between the parties’ services, other than its submission that the parties’ services are identical or similar. In its counterstatement, the applicant argues that the opponent’s services are “marketing of cosmetics” and “promotional services”, and submits that “[a]ny overlap is minimal — Applicant’s online marketing services are general and not limited to cosmetics; target audience, purpose and commercial origin differ”.¹⁴

23. As explained previously in relation to fair and notional use, even if the applicant deems the opponent’s services as “marketing of cosmetics”, the opponent’s trade mark is registered for “advertising” at large. It is therefore entitled to rely on this as its mark is not subject to any proof of use. It is my view that the applicant’s services include the opponent’s term *advertising*. The parties’ services are therefore identical under the principle in *Meric*.

Provision of an online marketplace for buyers and sellers of goods and services.

24. It is my view that there is a degree of similarity between these services and the opponent’s *retail and wholesale services, including online [...]*, which is in respect of a range of goods, such as *eau de Cologne, toilet water, scented water, hair conditioners, bases for flower perfumes, massage candles for cosmetic purposes, depilatory wax, moustache wax, make-up powder, mouthwashes, not for medical*

¹⁴ Counterstatement, page 7

*purposes, hair dyes, cosmetics.*¹⁵ The services' nature and purpose broadly overlap, because both services relate to the sale of goods online for the purpose of enabling consumers to view and purchase goods. However, they differ in that the opponent's services are online retail services for consumers to buy goods from retailers, whereas the applicant's services are the provision of an online marketplace to sell goods and services, meaning that a consumer can both place goods and services for sale as well as buy goods and services from other sellers. They may be distributed through similar trade channels at times, such as when consumers are searching for goods online and may find that search engines suggest multiple channels (such as online retail services or online marketplaces) from which they can purchase the item. They are not complementary as one is not essential to the other. They may however be in competition, as a consumer may choose which type of service to use to purchase an item. Taking these factors into account, I find that there is a medium degree of similarity between the services.

Online retail store services relating to clothing; Online retail services relating to clothing; Retail store services in the field of clothing.

25. As outlined above, the opponent argues that the applicant's services relating to the sale of clothing are similar to the opponent's *retail and wholesale services, including online [...], in relation to [...] cosmetics*. In its counterstatement, the applicant submits that these services are different due to their "[d]ifferent nature, purpose, method of use and trade channels." It therefore argues that "[c]lothing retail is unrelated to the sale of cosmetics; no complementarity or competition exists".¹⁶

26. In *Frag Comercio Internacional, SL, v OHIM*,¹⁷ in paragraph 30 of its judgment the GC held that:

"Secondly, the Board of Appeal did not err in finding, in paragraph 20 of the contested decision, that the goods in Classes 18 and 25 covered by the earlier Community mark were not complementary in relation to the 'perfumery' in Class 3 covered by the mark applied for. In that regard, the Court has held previously

¹⁵ Given the length of the term, I do not intend to replicate it here. For the full term, please see the goods and services comparison table.

¹⁶ Counterstatement, page 7

¹⁷ Case T-162/08

that perfumery goods and leather goods in Class 18 cannot be considered similar. Perfumery goods and leather goods are plainly different as regards both their nature and their intended purpose or their method of use. Moreover, there is nothing that enables them to be regarded as in competition with each other or functionally complementary. The same conclusion must be drawn concerning a comparison between perfumery goods and clothing in Class 25. Those goods, as of themselves, also differ as regards both their nature and their intended purpose or their method of use. There is nothing, either, that enables them to be regarded as in competition with each other or complementary (Case T-150/04 Mülhens v OHIM – Minoronzoni (TOSCA BLU) [2007] ECR II-2353, paragraphs 31 and 32).

27. It is my view that this is comparable to the competing services at issue. This is because the core nature relates to different goods being retailed (i.e. clothing v cosmetics) which are dissimilar to one another by the same rationale outlined above in *Frag Comercio Internacional* (i.e. clothing v perfume). Whilst I acknowledge that there is a minor overlap in nature (in that both are online retail services) and trade channels (where the goods are retailed through a large department store website, for example), it is my view that these overlaps are too broad to find that the services are therefore similar. Furthermore, outside of department store websites, it is my view that the services are typically provided through separate trade channels. For example, retailers of cosmetics (such as pharmacies) would not typically stock clothing. I therefore find that the parties' services are dissimilar to one another. I have considered the opponent's other goods and services, but it is my view that none of the other terms put the opponent in a more favourable position.

Online retail services relating to jewelry; Online retail services relating to toys.

28. As outlined above, in its submissions in lieu, the opponent argues that the applicant's services relating to the sale of toys and jewelry are similar to the opponent's *retail and wholesale services, including online [...], in relation to [...] cosmetics*. In its counterstatement, the applicant argues that its retail services relating to jewelry has "low to no similarity" with the opponent's services, and that its retail services relating to toys has "no similarity" with the opponent's services.

29. It is my view that these services are also different to the opponent's *retail and wholesale services, including online [...], in relation to [...] cosmetics*. This is on the same basis as the applicant's clothing-related retail services. It is my view that the goods being retailed (jewelry and toys) are not similar to the goods which are subject to the retail services of the opponent (cosmetics), as they differ as to their users, purpose, and core nature. They are also not complementary or in competition with each other. Whilst I acknowledge that there is a minor overlap in nature (in that both are online retail services) and trade channels (where the goods are retailed through a large department store website, for example), it is my view that these overlaps are too broad to find that the services are therefore similar. Furthermore, outside of department store websites, it is my view that the services are typically provided through separate trade channels in that the goods are more usually sold through dedicated or specialised shops. I therefore find that the parties' services are dissimilar to one another. Once again, I have considered the opponent's other goods and services, but I consider that none of the other terms put the opponent in a more favourable position.

Comparison of goods and services summary

30. Some similarity between goods is essential for engaging the test of the likelihood of confusion. In *eSure Insurance v Direct Line Insurance*,¹⁸ Lady Justice Arden stated that:

"49. ...If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity."

31. As I have found no similarity for the following services, the opposition under section 5(2)(b) fails in relation to them:

Class 35: Online retail store services relating to clothing; Online retail services relating to jewelry; Online retail services relating to clothing; Online retail services relating to toys; Retail store services in the field of clothing.

¹⁸ [2008] ETMR 77 CA

32. I will now go on to consider whether there exists a likelihood of confusion under section 5(2)(b) for the following goods and services:

Class 35: *Online retail store services relating to cosmetic and beauty products; Online marketing; Provision of an online marketplace for buyers and sellers of goods and services.*

Average consumer and the purchasing act

33. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*,¹⁹ the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)*,²⁰ 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;

¹⁹ [2025] UKSC 25

²⁰ [2024] EWCA Civ 262

- (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.

34. In its submissions, the opponent submits that "[t]he average consumer will exercise a reasonable degree of attention particularly in relation to matters such as colours and flavour preferences" although "the level of attention is not likely to be particularly high give (sic) the ordinary and inexpensive nature of the goods".²¹ In its counterstatement, the applicant states that "consumer attention is higher in cosmetic purchases".²² The applicant does not specify the degree of attention paid for the other services, but submits overall that "the average consumer would exercise an appropriate level of attention".²³

35. The average consumer for the retail/wholesale and online marketplace services will be the public at large, as well as trade customers. The cost of purchase is likely to vary greatly for the retail of the goods above depending on the type of products being sold. Several factors may influence consumers, such as the range of goods available, delivery times, and postage costs. Whilst the applicant argues that consumer attention is higher in cosmetic purchases, it does not offer any evidence to demonstrate that this is the case. I therefore instead find that, based on these factors, the average consumer is likely to pay around a medium degree of attention, although this may be higher for trade customers (in that ensuring that the goods meet the requirements of their consumers has a direct impact on the success of their businesses). I bear in mind that in relation to the assessment of the likelihood of confusion, it is the group of consumers with the lowest level of attention which must be taken into consideration.²⁴ The consumer will choose the services after seeing the mark online or on the website. They may also select the services after seeing advertisements or reviews in printed

²¹ Opponent's submissions, page 13

²² Counterstatement, page 7

²³ Counterstatement, page 7

²⁴ See Case T-247/12, *Argo Group International Holdings Ltd. v OHIM* and *Idem* T-356/14 [25]-[26]

publications or online via websites and/or social media. The visual component is therefore likely to dominate the selection process, but I also do not discount the role that aural selection may play, especially when receiving word-of-mouth recommendations and when discussing the services with others via the telephone.

36. The average consumer for the marketing services will be trade customers. The cost of purchase is likely to vary greatly depending on the type of marketing needed. Several factors may influence consumers, such as such as the expertise and reputation of the organisation providing the services, the availability of the provider, and the suitability for their needs. Taking into account all of these factors, it is my view that the average consumer is likely to pay a medium to high degree of attention. The consumer will choose the services after seeing the mark on signage or on the premises. They may also select the services after seeing advertisements or reviews in printed publications or online via websites and/or social media. The visual component is therefore likely to dominate the selection process, but I also do not discount the role that aural selection may play, especially when receiving word-of-mouth recommendations and when discussing the services with others via the telephone.

Comparison of marks

37. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo SA v OHIM*²⁵ 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

²⁵ Case C-591/12P

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

38. 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.

39. The respective trade marks are shown below:

The opponent’s mark	The applicant’s mark
MIAMO COSMETICS	

40. In its submissions, the opponent submits that “MEAMO” and “MIAMO”... amount to the dominant and distinctive elements of both marks”. The applicant does not make specific submissions on the competing marks’ dominant and distinctive elements.

41. The opponent’s mark is a plain word-only mark consisting of the uppercase words “MIAMO COSMETICS”. As the word “MIAMO” will be understood by the average consumer as an invented word, it is my view that it is the most distinctive element of the opponent’s mark and therefore dominates the opponent’s mark’s overall impression. The word “COSMETICS” will be understood in the context of the goods and services as relating to cosmetics, and therefore it will be viewed as descriptive in nature. It still contributes to the mark’s overall impression, but to a much lesser extent.

42. The applicant’s mark is a figurative mark. Whilst “MEA” is presented in a highly stylised manner through the use of geometric shapes, I am of the view that a significant proportion of consumers will read the larger elements within the mark in totality as “MEAMO”. This is due to the established principle that, notwithstanding the highly stylised manner, consumers will break down the mark into verbal elements which

suggest a concrete meaning or resemble words known to them (*Usinor SA v OHIM*).²⁶ Whilst some consumers may see the mark as consisting of abstract shapes and the letters “MO”, it is my view that they will not constitute a significant proportion of consumers. The mark also contains “Find Yourself” which is much smaller in size and appears in a slightly stylised typeface. It is my view that it will be understood as a non-distinctive, motivational/promotional tagline. As “MEAMO” will be understood by the average consumer as an invented word, it is the most distinctive aspect of the applicant’s mark and therefore dominates its overall impression. The words “Find Yourself” still contribute, but to a lesser degree.

Visual comparison

43. In its submissions in lieu, the opponent submits that “[v]isually MEAMO and MIAMO are very similar with the dominant and distinctive elements of both words only differing by one letter”.²⁷ In its counterstatement, the applicant does not specify the level of visual similarity, but submits that “the marks are dissimilar overall”.²⁸

44. The competing marks are visually similar in that the first word in each mark is formed of the same first, third, fourth and fifth letters, namely “M-AMO”. Although the second and third words in the applicant’s mark are written in a stylised typeface, fair and notional use would allow the opponent’s word mark to be presented in another typeface and font. This is because word marks are protected regardless of the case type, as shown in *LA Superquimica v European Union Intellectual Property Office (EUIPO)*,²⁹ in which the GC held at [39] that word-only marks protect the word or words contained in the mark in whatever case, colour or typeface. Therefore, that the applicant’s mark is in a different typeface is not significant in my comparison of the marks.

45. The competing marks differ visually as the second letter of the first word in the opponent’s mark is “l”, whereas the second letter in the first word in the applicant’s mark is “E”. The opponent’s mark contains the second word “COSMETICS”, whereas the applicant’s mark contains the words “Find Yourself”. The applicant’s mark also

²⁶ Case T-189/05

²⁷ Opponent’s submissions in lieu, page 14

²⁸ Counterstatement, page 7

²⁹ Case T-24/17

contains a number of geometric elements which, as I explained previously, will be interpreted as verbal elements. However, the high degree of stylisation of these first three letters falls outside of the remit of in *LA Superquímica*, and therefore constitutes a visual difference between the competing marks.

46. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the marks are visually similar to a medium degree.

Aural comparison

47. In its submissions in lieu, the opponent submits that “[p]honetically, the prefix elements of both words “MEAMO” and “MIAMO”, which also amount to the dominant and distinctive elements of both marks, are pronounced identically”.³⁰ In its counterstatement, the applicant does not specify the level of aural similarity, but submits that “the marks are dissimilar overall”.³¹

48. It is my view that the first word in opponent's mark will be pronounced “MY-AH-MO” (with ‘MI’ pronounced the same as in “MIAMI”) or “ME-AH-MO” (with ‘MI’ pronounced the same as in the female name “MIA”). If articulated, the second word in the opponent's mark (“COSMETICS”) would be pronounced in the ordinary way. However, in *Pensa Pharma v OHIM*,³² the GC at [107] stated that:

“...the relevant public generally pays greater attention to the beginning of a sign than to the end. In those circumstances, that public will focus its attention on the element ‘pensa’ in the contested mark and not on the element ‘pharma’ in that mark. It may be presumed that that public, which generally tends to contract long marks consisting of two words into a single word, will not pronounce the word ‘pharma’, inasmuch as that word is superfluous because of the nature of the goods and services covered by the contested mark, namely pharmaceutical goods and services.”

³⁰ Opponent's submissions in lieu, page 13

³¹ Counterstatement, page 7

³² Case T-544/12

49. Moreover, in *Onyinye Udokporo v Enrich International Ltd*,³³ Phillip Johnson as the Appointed Person followed the GC's approach, stating at [18] that:

“Accordingly, it was open to the Hearing Officer to treat the word “LEARNING” as descriptive in relation to education-related services. And in light of this finding, it was likewise perfectly acceptable for the Hearing Officer to conclude that this element of the mark would not usually be verbalised.”

50. It is my view that, as the word ‘COSMETICS’ will be understood as indicating goods and services relating to cosmetics, and therefore it is likely that a significant proportion of consumers would not articulate this word when saying the opponent's mark.

51. It is my view that the applicant's mark (if articulated in full) will be pronounced as “ME-AH-MO FIND YOURSELF”. However, given its smaller size, offset positioning, and non-distinctive nature, it is my view that a significant proportion of consumers would not verbalise the tagline within the mark.

52. If the opponent's mark is articulated as “MY-AH-MO”, then the competing marks are aurally similar, as the portion of the marks which I have found will be verbalised (namely, “MIAMO” and “MEAMO”) are both three-syllable words. The first syllable begins with a M in both marks. The second and third syllables in each mark are identical (A-MO). The competing marks differ aurally if the word “MIAMO” is pronounced as “MY-AH-MO”, as the first syllable of the opponent's mark is “MY” whereas the first syllable of the applicant's mark is “ME”. However, it is my view that this only produces a minor aural difference between the competing marks, given the phonetic similarity between these two initial syllables. As I am of the view that a significant proportion of consumers will only pronounce the distinctive first words of the competing marks, I find that the marks are aurally similar to a high degree if “MIAMO” is pronounced as “MY-AH-MO”. However, if the opponent's mark is articulated as “ME-AH-MO”, then I find that the competing marks are aurally identical.

³³ BL O/1141/25

Conceptual comparison

53. In its submissions in lieu, the opponent submits that “[c]onceptually, the words MEAMO and MIAMO have no meaning in relation to cosmetics and/or the sale of cosmetics/the various goods listed”.³⁴ In its counterstatement, the applicant does not specify the level of conceptual similarity, but submits that “the marks are dissimilar overall”.³⁵

54. As stated above, the words “MEAMO” and “MIAMO” in the competing marks will be understood as invented terms. As such, they do not convey a conceptual meaning. The opponent’s mark also contains the word “COSMETICS” will be understood by the average consumer in the ordinary way, i.e. beauty products which are applied, e.g. to the skin, to improve it. The applicant’s mark also contains the words “Find Yourself”. As previously explained, it is my view that consumers will understand this as a motivational or promotional tagline which encourages self-exploration and self-expression. These differing elements therefore constitute conceptual differences, albeit weak concepts due to their allusive or promotional nature. On this basis the marks are neutral or, insofar as the marks share any concept, they are dissimilar.

Distinctive character of the earlier mark

55. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*,³⁶ 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).

³⁴ Opponent’s submissions in lieu, page 14

³⁵ Counterstatement, page 7

³⁶ Case C-342/97

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)."

56. Registered trade marks possess various degrees of inherent distinctive character; marks which are suggestive or allusive of a characteristic of the goods and services tend to be at the lower end of the scale, whereas invented words with no allusive qualities tend to be at the higher end of the scale. A range of marks will fall in between, such as dictionary words with no obvious connection to the goods and services.

57. Although the distinctiveness of a mark can be enhanced by virtue of the use made of it, the opponent has not filed any evidence of use. As such, I have only the inherent position to consider.

58. In its submissions, the opponent submits that its mark "has a good level of distinctiveness".³⁷ The applicant does not make any submissions in relation to the earlier mark's level of distinctiveness.

59. As stated previously, the word "MIAMO" will be understood by the average consumer as an invented term, and as such, it carries a high level of distinctiveness. The second word "COSMETICS" will be understood as describing or allusive of goods and services which relate to cosmetics. Overall, the opponent's mark in totality has a high level of inherent distinctive character due to the inclusion of the highly distinctive word "MIAMO".

Global assessment – conclusions on likelihood of confusion

³⁷ Opponent's submissions in lieu, page 15

60. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no set formula for establishing a likelihood of confusion between marks; it is a global assessment where a number of factors need to be borne in mind.

61. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the competing marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the applicant's mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful 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 they have retained in their mind.

62. In its submissions, the opponent submits that "there is a likelihood of confusion between the Applicant's mark and the Opponent's Earlier Trade Marks". In its counterstatement, the applicant submits, in relation to its application, that "there is no sufficient basis to refuse its registration".

63. Earlier in this decision I found that the applicant's remaining services range from being identical to being similar to a medium degree to the opponent's goods and services. The average consumer of the services will be the general public and trade customers for the retail/wholesale-related services, and trade customers for the marketing services. The average consumer is likely to pay around a medium or a medium to high degree of attention when selecting the class 35 services. The services will primarily be selected through visual means, although I do not discount an aural element to the selection process. I have found the marks to be visually similar to a medium degree, and either aurally similar to a high degree (if the opponent's mark is articulated as "MI-AH-MO") or aurally identical (if the opponent's mark is articulated as "ME-AH-MO"). Insofar as the marks convey any concept, they are conceptually dissimilar (due to the inclusion of the differing additional elements). The earlier mark

has a high level of inherent distinctive character due to the inclusion of the word “MIAMO”.

64. It is my view that, particularly when accounting for imperfect recollection, consumers may mistake or misremember the marks for one another. Both marks contain the near-identical verbal element “MEAMO”/“MIAMO” which are both highly distinctive in relation to the services. It is my view that the average consumer may overlook or not recall the competing marks’ non-distinctive elements such as the tagline and the word “cosmetics” (which are unlikely to be verbalised by a significant proportion of consumers) and the minor difference between E and I in the dominant words “MEAMO”/“MIAMO”, even when paying a medium degree of attention or higher. Notwithstanding the distinctive nature of the stylisation to the letters “MEA” in the applicant’s mark, it is my view that consumers will perceive the verbal element “MEAMO” as a whole, and it remains the dominant and distinctive element of the applicant’s mark which will be readily recalled and misremembered with “MIAMO”, which is the dominant and distinctive element of the opponent’s mark. The competing marks’ medium degree of visual similarity and the high degree of aural similarity or aural identity (depending on how the word “MIAMO” is articulated), the high level of distinctive character of the word “MIAMO” in the opponent’s earlier mark, and the identity and medium level of similarity between the parties’ goods and services are all factors which support this finding. Consequently, I find that there exists the likelihood of direct confusion.

65. However, in case I am wrong in this finding, I will now go on to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*,³⁸ Mr Iain Purvis Q.C., 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

³⁸ BL O/375/10

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

66. I bear in mind that these categories are not intended to be an exhaustive list. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors*,³⁹ Arnold LJ approved Mr Purvis's formulation but added:

"13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16] 'a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a

³⁹ [2021] EWCA Civ 1207

finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

67. It is not sufficient that a mark merely calls to mind another mark (as per *Duebros Limited v Heirler Cenovis GmbH*).⁴⁰ This is mere association not indirect confusion. A finding of indirect confusion should not be made merely due to a shared element within marks. As per *L.A. Sugar Limited v By Back Beat Inc*⁴¹ (set out above), indirect confusion should be identified in cases where the average consumer is likely to notice the differences between the competing marks but assume an economic link between the two undertakings based on their similarities.

68. I also consider the relevance of *Medion v Thomson*⁴² and the subsequent case law. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*⁴³, Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*⁴⁴, on the court's earlier judgment in *Medion*. The judge said:

"18. The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19. The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole,

⁴⁰ BL O/547/17

⁴¹ BL O/375/10

⁴² Case C-120/04

⁴³ [2015] EWHC 1271 (Ch)

⁴⁴ Case C-591/12P

and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20. The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21. The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

69. As pointed out by Arnold J, the principle established in *Medion v Thomson* extends to the situation where the composite mark contains an element which is similar to the earlier mark. In *Aveda Corporation v Dabur India Limited*,⁴⁵ Arnold J considered the marks AVEDA and DABUR UVEDA and stated the following:

“48. On that basis, I consider that the hearing officer failed correctly to apply *Medion v Thomson*. He failed to ask himself whether the average consumer would perceive UVEDA to have significance independently of DABUR UVEDA as a whole and whether that would lead to a likelihood of confusion. Accordingly, it is necessary for me to consider the matter afresh. Having regard to the matters set out in paragraph 39 above, I think there can be little doubt that the average consumer who was familiar with AVEDA beauty products would be likely to be confused by the use of DABUR AVEDA in relation to identical goods. In particular, there would be a strong likelihood that the average consumer would think that it indicated some connection between DABUR and AVEDA. In my judgment it makes little difference that the second word in the

⁴⁵ [2013] EWHC 589 (Ch)

composite mark is UVEDA rather than AVEDA. As the hearing officer rightly accepted, UVEDA is both visually and aurally very close to AVEDA. The human eye has a well-known tendency to see what it expects to see and the human ear to hear what it expects to hear. Thus it is likely that some consumers would misread or mishear UVEDA as AVEDA. (Indeed, not only did the hearing officer himself write AVEDA instead of UVEDA at [43], but also the Intellectual Property Office's database of past decisions currently records the contested mark as being "Dabur AVEDA".)

70. As stated previously, it is my view that, notwithstanding the stylisation to the letters, the applicant's mark will be interpreted by a significant proportion of consumers as the word "MEAMO". It is my view that the word "MIAMO" plays an independent distinctive role in the opponent's mark, and "MEAMO" plays an independent distinctive role in the applicant's mark. In the competing marks, these words both have a distinctive significance which is independent of the significance of the marks as wholes. Whilst I acknowledge that "MIAMO" and "MEAMO" are not identical, cases such as *Whyte and Mackay* and *Aveda* demonstrate that they do not have to be. The words "MIAMO" and "MEAMO" are visually similar and either aurally similar or aurally identical (depending on how "MIAMO" is articulated). Moreover, "MIAMO" and "MEAMO" will be understood as invented words with no counteracting concept, making them more prone to imperfect recollection. Furthermore, "MIAMO" in the opponent's mark, as an invented word, is highly distinctive. Taking these factors into consideration, I am of the view that the average consumer, whilst noting the additional words "COSMETICS" and "Find Yourself" in the competing marks, will nevertheless perceive the "MIAMO"/"MEAMO" elements in the manner of a house mark, especially as both fall at the beginning of the marks, and neither forms a meaningful unit with the remainder of the mark. The consequence of such a perception is that the average consumer will conclude that the goods emanate from economically linked undertakings, or the same undertaking using a variation on its brand. Consequently, I find that there exists the likelihood of indirect confusion.

Conclusion

71. The opposition under section 5(2)(b) has been partially successful. Subject to any successful appeal, the application will be refused registration for the following services:

Class 35: *Online retail store services relating to cosmetic and beauty products; Online marketing; Provision of an online marketplace for buyers and sellers of goods and services.*

72. The application will continue to registration for the following services for which the opposition has failed:

Class 35: *Online retail store services relating to clothing; Online retail services relating to jewelry; Online retail services relating to clothing; Online retail services relating to toys; Retail store services in the field of clothing.*

Costs

73. As the parties have both achieved a roughly equal measure of success, I find it appropriate that each party bears its own costs.

Dated this 30th day of September 2026

K LEWIS

For the Registrar