

O/0898/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004214788

BY MICHAEL BUTTERWORTH

TO REGISTER:

Prop Trumps

IN CLASSES 16, 28 & 35

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP600003827 BY

JAMES MICHAEL SCOLLARD

Background and pleadings

1. On 6 June 2025, Michael Butterworth (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the applicant’s mark”). The applicant’s mark was accepted and published for opposition purposes on 4 July 2025 and registration is sought for the following goods and services:

Class 16: Cards; Scoring cards; Trading cards.

Class 28: Playing cards; Cards (Playing -); Playing cards and card games; Playing card cases; Game cards; Card games.

Class 35: Real estate marketing; Advertising of commercial or residential real estate; Advertising, marketing and promotion services; Marketing, advertising and promotion services.

2. On 3 October 2025, James Michael Scollard (“the opponent”) filed a fast track opposition opposing the application in full under sections 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following mark:

Property Trumps

UK Registration no. UK00003553478 (“opponent’s mark”)

Filing date 09 November 2020; Registration date 21 May 2021

Relying on all goods, being:

Class 28: Toys.

3. By virtue of relying on sections 5(2)(a) and 5(2)(b) of the Act, the opponent’s position is that the applicant’s mark should not be registered because the marks are so similar that there are no significant differences and they are effectively identical, and the marks are to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, and because of this

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

4. The applicant filed a counterstatement denying the claims made and submitting that “Prop Trumps” is a distinct and different name to “Property Trumps”.
5. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008 but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

6. The opponent is represented by Ellis Jones Solicitors LLP. The applicant is not represented. Neither party filed evidence. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. No hearing was requested or considered necessary. Only the applicant filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.
7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

PRELIMINARY ISSUES

8. In its counterstatement, the applicant submits that the word “Trumps” originates from the well-established “Top Trumps” brand. The applicant submits that while “Prop Trumps” bears some superficial similarity to “Top Trumps” and “Property Trumps” in form, it is fundamentally distinct in both name and purpose. The

applicant states that the word “Prop” was not included in the original trademark application or registration for “Property Trumps” suggesting it was not deemed sufficiently distinctive to warrant protection. The applicant submits that “Prop Trumps” operates under a completely different commercial model.

9. Whilst the above submissions are noted together with the parties’ written submissions in lieu, these have no bearing on the assessment I am required to make. While evidence of other marks in the marketplace may assist in demonstrating that a mark has a weakened distinctive character due to its commonplace use, no evidence has been filed to that effect in these proceedings. As a result, the position in respect of this point is entirely unsupported. When considering the likelihood of confusion under section 5(2)(b) the assessment must be based, in fact, on the concept of ‘notional and fair use’ which involves carrying out the comparison of the goods and services based on the specifications before me, not the goods and services effectively provided by the parties or the way in which they reach the market.¹

10. In its written submissions in lieu, the applicant provided the following fall-back specification (without prejudice):

Class 28: Playing cards and card games, all being promotional and marketing items distributed by or on behalf of commercial sponsors at exhibitions, trade shows and corporate events, and bearing branding, statistics or imagery of property, venues or facilities; none being sold through retail channels to end consumers as standalone consumer card games.

11. The fall-back specification in the preceding paragraph will be dealt with accordingly later in my decision should it become necessary to do so.

¹ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

DECISION

Sections 5(2)(a) and 5(2)(b): legislation and case law

12. Sections 5(2)(a) and 5(2)(b) of the Act are as follows:

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

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

(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”.

13. Section 5A of the Act states as follows:

“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.”

14. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade

mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

15. Given its earlier filing date, the opponent’s mark qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process more than five years before the filing date of the applicant’s mark, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods highlighted in its notice of opposition without having to demonstrate genuine use.

16. The following standard summary of the principles applicable to the assessment of the likelihood of confusion (under section 5(2) of the Act) 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 great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; 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 and services

17. The parties' goods and services are outlined below:

The opponent's goods	The applicant's goods and services
	Class 16: Cards; Scoring cards; Trading cards.
Class 28: Toys.	Class 28: Playing cards; Cards (Playing -); Playing cards and card games; Playing card cases; Game cards; Card games.
	Class 35: Real estate marketing; Advertising of commercial or residential real estate; Advertising, marketing and promotion services; Marketing, advertising and promotion services.

18. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*² where the Court of Justice of the European Union ("CJEU") stated at paragraph 23 of its judgement:

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

² Case C-39/97

19. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

20. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

21. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

22. In *Kurt v Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the 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”.

23. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken against transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public is liable to believe that the

responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense – but it does not follow that wine and glassware are similar goods for trade mark purposes.”

24. Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

25. I bear in mind that it is permissible to group goods and services together for the purposes of assessment: *Separode Trade Mark*.³

26. In its notice of fast track opposition and statement of grounds, the opponent's position is that the applicant's goods and services are likely to be identical or highly similar to those of the opponent which is likely to cause confusion on the part of the public and association with the earlier mark. The opponent submits that registration for the applicant's mark is sought in relation to similar goods in class 28 and class 16 as the opponent's mark. The opponent also submits that there is overlap with class 35, in which the applicant may seek to use playing cards to market, advertise or promote property or real estate.

27. In its written submissions in lieu, the applicant accepts that the class 28 specifications nominally overlap insofar as both relate to playing cards and card games. The applicant further submits that similarity of goods is only one factor in the global appreciation and offers a fall-back limited specification as specified at paragraph 10 above.

³ BL O-399-10 (AP)

28. In making the following comparison, I remind myself of Section 60A(1)(b) of the Act which sets out that goods or services are not to be regarded as dissimilar from each other solely on the ground that they appear in different classes under the Nice Classification. I also note that in *Unicorn Studio Inc v Veronese* [2024] EWHC 1098 (Ch), Iain Purvis KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense.⁴

Class 16

Scoring cards.

29. Without any submissions from the parties, it is my understanding that *cards* are a type of greeting card or business card and *scoring cards* are cards used to record results or performance during a game, match or competition, by virtue of these goods being in class 16. The Court of Appeal held that “the registrar is entitled to treat the class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods”.⁵ The above applicant’s goods are different in nature, purpose and user to the opponent’s goods. The goods are not in competition and are not complementary. The trade channels also differ. Taking all of these factors into consideration, I find the goods to be dissimilar.

Trading cards.

30. I bear in mind that trading cards are often a game which is sold by toy retailers. However, by virtue of being in class 16 which includes “*trading cards, other than for games*” it is clear that these trading cards are not used for games. I consider the purpose of the opponent’s “toys” to be for entertainment whereas the purpose of the above applicant’s goods differs in that it is to trade cards. The users would overlap on a very general level being members of the public, however, this is insufficient to give rise to a level of similarity. The trade channels will differ as the opponent’s toys will be sold through a toy retailer whereas trading cards will not. I

⁴ At [24].

⁵ *Altecnic Ltd’s Trade Mark Application* [2002] RPC 34.

have no evidence before me to suggest that there would be an overlap in this regard. There is no competition or complementarity. Taking all factors into consideration, I find the goods to be dissimilar.

Cards.

31. Both of the applicant's goods in the two preceding paragraphs, being *scoring cards* and *trading cards*, fall within the applicant's broader term of *cards*. Given this, the same logic applies as that discussed in the two preceding paragraphs and consequently I find the goods to be dissimilar. I cannot see any other point of similarity with *cards* that would put the opponent in any stronger position.

Class 28

Playing cards; Cards (Playing -); Playing cards and card games; Playing card cases; Game cards; Card games.

32. The applicant accepts that the class 28 specifications nominally overlap insofar as both relate to playing cards and card games. However, they have not stated the level of similarity. Consequently, I will undertake a comparison of the goods in the usual way. The opponent's specification includes the broad term "toys" which is not limited in any way. The above applied for goods overlap in nature with the opponent's "toys" as both are recreational goods intended for play, albeit playing cards, game cards and card games are a specific game apparatus whereas "toys" encompasses a wide variety of play apparatus. The purpose of the respective goods overlaps as all goods are used for entertainment. The users overlap being the general public, be that adults or children. The method of use overlaps as both sets of goods are used for play activities, although the specific method of use is likely to differ. There is no competition or complementarity. The trade channels overlap as the goods are likely to be sold through the same retailers and are likely to be located in reasonable proximity to each other within those retailers. Taking all factors into consideration, I consider the goods are similar to a medium degree.

Class 35

Real estate marketing; Advertising of commercial or residential real estate; Advertising, marketing and promotion services; Marketing, advertising and promotion services.

33. In this case, I compare the applicant's services above with the opponent's term "toys". The above applicant's services are clearly different in nature, purpose and method of use to the opponent's goods "toys". Given that the first two applicant's services above may advertise and market real estate, these services are clearly dissimilar to the opponent's goods. However, the fact that the third and fourth applicant's services above may advertise, market and promote any goods or services (including toys) does not automatically make them similar to the opponent's goods themselves. The consumers of the above applicant's services are likely to be businesses and not the end consumers being the general public. The goods and services are not in competition and are not complementary. The trade channels differ. Taking all of these factors into consideration, I find the goods and services to be dissimilar.

Conclusion of goods and services comparison

34. Where there is no similarity of goods or services, there can be no likelihood of confusion in respect of oppositions brought under s5(2)(a) and (b) grounds.⁶ As a result, my findings above mean that the opposition fails in respect of the following goods and services, being those that I have found dissimilar:

Class 16: Cards; Scoring cards; Trading cards.

Class 35: Real estate marketing; Advertising of commercial or residential real estate; Advertising, marketing and promotion services; Marketing, advertising and promotion services.

⁶ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

The average consumer and the nature of the purchasing act

35. 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.

36. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

37. I have no submissions from the opponent as to who the average consumer for the goods at issue will be. The applicant submits that the average consumer of card games and playing cards in class 28 is a member of the general public, reasonably well-informed and reasonably observant and circumspect, who exercises a normal level of attention, not prone to confusion through speed of selection, when purchasing such goods. The applicant submits that card games are typically the subject of a considered (if not especially expensive) purchase: consumers read the title, look at the imagery and consider the theme before buying. They are not impulse purchases of the kind where the consumer might mistake one mark for another at speed.

38. The goods at issue will be selected by members of the general public at large. The goods will be available via general physical retailers or specialist toy retailers where they will be placed on shelves and self-selected by the consumer. Alternatively, the goods will be available online where they will be viewed on webpages. As such, the purchasing process will be primarily visual, although I do not discount an aural component playing a part.

39. The goods at issue will range in price but are, for the most part, likely to be fairly inexpensive. As for the frequency at which the goods will be purchased, I am of the view that, for the most part, they will be selected on a fairly regular basis. The average consumer is likely to consider factors such as price, quality, longevity and age appropriateness/suitability. These factors are fairly ordinary and I, therefore, find that the average consumer will pay a medium degree of attention during the selection process for the goods.

Distinctive character of the opponent's mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

41. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The opponent has not filed evidence of use of its mark. Therefore, I have only the inherent position to consider.

42. The opponent's mark is a word only mark that consists of two words “Property Trumps”. Both words are ordinary dictionary words that consumers will understand

the meaning of. An extract from Cambridge dictionary defines “Trumps” as “one of the four groups in a set of playing cards that has been chosen to have the highest value during a particular game or part of a game”. Additionally, an extract from Cambridge dictionary defines “Trump” as a verb meaning “to beat someone or something by doing or producing something better”. Placing the words “Property” and “Trumps” together, I consider that the majority of consumers will understand them or associate them with a card game associated with property or something that makes a property better than another property. The word “Trumps” alludes to what some of the goods are. Taking all of this into consideration, I am of the view that the inherent distinctiveness of the opponent’s mark is between a low and medium degree.

Comparison of marks

43. It is a pre-requisite of section 5(2)(a) of the Act that the trade marks at issue are identical. In this case, the opponent’s mark is a word only mark for “Property Trumps” and the applicant’s mark is a word only mark for “Prop Trumps”. The first word of each mark is clearly different, meaning they are plainly not identical. The consequence of this is that the opposition may not proceed under section 5(2)(a) of the Act. I will now proceed in respect of section 5(2)(b) ground.

44. 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.

45. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

46. 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.

47. The respective trade marks are shown below:

The opponent’s mark	The applicant’s mark
Property Trumps	Prop Trumps

48. In its notice of fast track opposition, the opponent argues that there is a likelihood of confusion and association between the marks because of their significant visual, aural, phonetic and conceptual similarities. The opponent submits that the marks are so similar with no significant differences and are effectively identical. The opponent further submits that “Prop Trumps” could reasonably be perceived by the average consumer, and is likely intended, as an abbreviation of “Property Trumps”. But for the omission of the letters “erty” from the end of the word “Prop” the opponent submits that the marks would be identical, stating that the omission does not create any significant distinction between the two marks, which would therefore be classed as being identical, or in the alternative, similar.

49. In its counterstatement, the applicant submits that while “Prop Trumps” bears some superficial similarity to “Property Trumps” in format, it is fundamentally distinct in both name and purpose. In its written submissions, the applicant submits that the visual similarity between the marks is medium at best with material difference in the distinctive leading word. The applicant submits the aural similarity is medium at best with the marks differing by two syllables and the conceptual similarity is low or non-existent with the marks evoking concepts (props versus property).

50. I do not intend to repeat all submissions from both parties in full here. Instead, I will, where necessary, discuss them further below. For the avoidance of doubt, however, I can confirm that I have taken these submissions into account in making the following comparison.

Overall impression

51. The applicant's mark is a word only mark consisting of the words "Prop Trumps". There are no other elements that contribute to the overall impression of the mark which lies equally across the mark.

52. The opponent's mark is a word only mark consisting of the words "Property Trumps". There are no other elements that contribute to the overall impression of the mark which lies equally across the mark.

Visual comparison

53. At the outset of this comparison, I consider it necessary to set out that as both marks are word only marks, they are protected for use in any standard case. Visually, the marks overlap through the use of the word "TRUMPS" being the second word of each mark. The marks also overlap through the use of the letters "PROP" being the first word of the applicant's mark and the first four letters of the first word of the opponent's mark. The marks differ in the presence of the last four letters of the first word of the opponent's mark being "ERTY". Regardless of its role within the mark, this point of difference will have an impact on the visual comparison of the marks. Bearing in mind that consumers tend to focus on the beginning of marks,⁷ the average consumer will notice that the first word is twice as long in the opponent's mark, and although there are visual similarities created by the common first four letters, this point of difference will be quite important. Overall, I find the marks at issue are visually similar to a medium degree.

⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Aural comparison

54. The opponent's mark consists of four syllables and will be pronounced as "PROP-UH-TEE-TRUMPS". The applicant's mark consists of two syllables and will be pronounced as "PROP-TRUMPS". The first and second syllables of the applicant's mark are identical to the first and fourth syllables of the opponent's mark. Regardless of its role in the opponent's mark, the letters "ERTY" being the second and third syllables of the opponent's mark, acts as a point of aural difference and result in the opponent's mark having double the number of syllables than the applicant's mark. I remind myself that consumers tend to focus on the beginnings of marks. Taking all factors into consideration, I find that the marks are aurally similar to a medium degree.

Conceptual comparison

55. The applicant submits that the conceptual comparison is the decisive point. The applicant states that "Prop" is not, in standard English usage, a recognised abbreviation of "Property" and the Concise Oxford English Dictionary records its meanings as: (i) a pole, beam or support; (ii) a portable object used on the set of a play, film or photographic shoot ("theatrical or stage prop"); (iii) a propeller; and (iv) a position in rugby union (prop forward). The applicant submits that where "Property" is abbreviated in commercial usage, the standard abbreviations are "Ppty", "Prpty" or "Prop." (with a terminating full stop signalling truncation, as commonly seen in estate agency listings). The applicant further submits that the application uses none of these forms and the bare word "Prop" without any terminating full stop reads naturally to the average UK consumer as the standalone English noun, not as a truncation of "Property". The applicant states that there is a substantial conceptual gulf between the marks: "Prop Trumps" naturally evokes promotional, theatrical or display props – wholly consistent with the applicant's goods, which are branded promotional card decks distributed at exhibitions and corporate events as marketing tools. "Property Trumps" evokes real estate. The marks convey different concepts. The applicant also submits that it is well established that conceptual differences are capable of counteracting visual and aural similarities to such an extent that the marks are properly to be regarded as

not similar overall: *Ruiz – Picasso v OHIM (PICARO/PICASSO)* (Case – C361/04P) at [20]; *Phillips-Van Heusen Corp v OHIM (BASS)* (Case T-292/01) at [54]. The applicant states that principle applies with particular force where, as here, the shared element of the two marks is descriptive and the differing elements carry the distinctive load.

56. The opponent submits the marks have significant conceptual similarities. The opponent states that the term “Prop Trumps” could reasonably be perceived by the average consumer, and is likely intended, as an abbreviation of “Property Trumps”. The opponent also submits that both marks share the distinctive word “Trumps” which is a commonly used word in relation to card games where the aim is to play a card which out-ranks or ‘trumps’ the opponent’s card.

57. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU, including *Ruiz Picasso v OHIM*.⁸ The assessment must, therefore, be made from the point of view of the average consumer.

58. The opponent’s mark consists of two words “Property Trumps”. I consider that consumers may associate the word “Trumps” as being allusive of a card game, and consequently associate the opponent’s mark with a card game associated with property or something that makes a property better than another property. The applicant’s mark consists of two words “Prop Trumps”. As a whole this mark conveys a message of a card game associated with props or something that makes one prop better than another prop. As such, it introduces a different meaning through the use of the word “Prop” instead of “Property”, though the concept of the shared element remains the same: “Trumps” in both marks is identical and refers to a card game or something being “better” or “trumping” something else. I do not consider that the word “Prop” would be viewed as an abbreviation of the word “Property” (particularly when used outside of property-related services) and, even if some people would see it this way, I do not consider that a significant proportion of average consumers would do so. Overall, I consider the marks to be conceptually similar to between a low and medium degree.

⁸ [2006] ECR I-643; [2006] E.T.M.R

Likelihood of confusion

59. 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 opponent's 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 they have retained in their mind.

60. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods at issue are marketed, and in which type of store/platform they are made available.

61. Throughout the course of this decision, I have found that the respective goods are similar to a medium degree. The average consumers are members of the general public at large who will select the goods via primarily visual means (though I do not discount an aural component) after having paid a medium degree of attention during the purchasing process. I have found the marks to be similar to a medium degree from a visual and aural perspective and similar to between a low and medium degree from a conceptual perspective. I have found the opponent's mark to possess between a low and medium degree of inherent distinctive character.

62. Taking all of the above into account and even bearing in mind the principle of imperfect recollection, I do not consider that consumers would inaccurately recall or misremember the marks for one another. In my view, the shared use of the first four letters “PROP” in the first word of each mark and the shared use of the second word “TRUMPS” is not sufficient to result in consumers overlooking the last four letters in the first word of the opponent’s mark and dissecting this first word, “PROPERTY”, which is where consumers tend to focus. It is my view that when looking to recall the marks, the consumer will pin their recollection of the applicant’s mark on the mark as a whole. Taking the above into account, it is my view that the differences between the competing marks are likely to be sufficient for the consumer, paying a medium degree of attention, to distinguish between them and avoid mistaking one for the other. I am further reinforced in this finding by the fact that the words PROP and PROPERTY convey different conceptual meanings to the average consumer, which will assist in distinguishing between them. As such, notwithstanding the principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion, even when considered on goods that are similar to a medium degree.

63. That leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein 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 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)".

64. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria*,⁹ 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.

65. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*.¹⁰ This is mere association not indirect confusion.

⁹ BL O/219/16

¹⁰ BL O/547/17

66. The types of examples of indirect confusion as set out in *L.A. Sugar* (cited above) are not exhaustive. However, they are the most usual circumstances where indirect confusion may arise. In my judgment, none of them apply here. The word “Trumps” is not so distinctive that consumers would assume that no-one else but the brand owner would be using it in a trade mark. In respect of whether the applicant’s mark includes the addition of a non-distinctive element, I am of the view that it does not. The addition of the letters “erty” to “Prop” cannot be considered a logical addition that indicates a sub-brand, particularly given that it changes the first word in the opponent’s mark to a different dictionary word in the applicant’s mark. Moving on, I do not consider that the marks fall within category (c) of *L.A. Sugar* on the basis that they do not appear to be a change of one element that is consistent or logical as a brand extension in the way described by the examples given (i.e. BRAT FACE and FAT FACE). Lastly, it seems improbable that the applicant’s mark would be taken as signifying a collaboration between the opponent and another party. I say this because collaborations would rarely be referred to in a way that would take the name of one brand and add additional letters to create a word with a separate meaning. For example, in the present case, the addition of “erty” to “Prop” would be seen as a reference to property not props, and in my view be illogical. Lastly, even if it were the case that the consumer was to call to mind the opponent’s mark upon seeing the “Prop Trumps” mark, this would be mere association and not indirect confusion. In my view, the common use of the word ‘Trumps’, which as discussed above is likely to be seen as a reference to a toy or game which involves one player trumping another, will be put down to coincidence rather than indicating common origin.

67. Taking all of the above into account, I find that there exists no likelihood of indirect confusion, even in circumstances where the consumer pays a medium degree of attention and when the consumers are confronted by the marks on goods similar to a medium degree.

68. I am fortified in this finding by the words of Lord Simonds in *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39, in which he stated that:

“Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion. A greater degree of discrimination may fairly be expected from the public where a trade name consists wholly or in part of words descriptive of the articles to be sold or the services to be rendered.”

Fall-back Class 28 specification

69. As I have found in the applicant's favour, I do not need to consider the applicant's fall back specification any further.

CONCLUSION

70. The opposition fails in its entirety. Therefore, the applicant's mark may, subject to any successful appeal of my decision, proceed to registration in the UK in respect of all the goods and services for which protection was sought.

COSTS

71. As the opposition has been unsuccessful, it would ordinarily be the applicant that would be entitled to an award of costs. However, as it has not instructed professional representatives, it was invited by the Tribunal to indicate whether it intended to make a request for an award of costs, including accurate estimates of the numbers of hours spent on a range of activities and any travel costs relating to defending the proceedings. It was made clear by way of the Tribunal's correspondence dated 29 March 2026 that, if the pro-forma was not completed by 30 April 2026, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded. The applicant did not return a completed pro-forma to the Tribunal and as it did not incur any official fees in these proceedings, I hereby make no order as to costs.

Dated this 30th day of September 2026

N Barratt

For the Registrar